



# Federal Register

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# Contents

## Federal Register

Vol. 69, No. 198

Thursday, October 14, 2004

### Agricultural Marketing Service

#### RULES

Dates (domestic) produced or packed in—  
California, 60947–60949

### Agriculture Department

See Agricultural Marketing Service  
See Forest Service

### Air Force Department

#### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 60990

### Centers for Disease Control and Prevention

#### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals; comment requests, 61019–  
61020

Grants and cooperative agreements; availability, etc.:  
Minority Communities; National Diabetes Education  
Program; correction, 61085

Meetings:  
Disease, Disability, and Injury Prevention and Control  
Special Emphasis Panels, 61020–61021

### Citizenship and Immigration Services Bureau

#### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 61034

### Coast Guard

#### NOTICES

Meetings:  
Lower Mississippi River Waterway Safety Advisory  
Committee, 61034–61035

### Commerce Department

See International Trade Administration  
See National Oceanic and Atmospheric Administration  
See National Telecommunications and Information  
Administration

#### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 60978–60980

### Commodity Futures Trading Commission

#### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 60988–60989

### Customs and Border Protection Bureau

#### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 61035

### Defense Department

See Air Force Department

#### RULES

Federal Acquisition Regulation (FAR):  
Introduction; technical amendments  
Correction, 60967

#### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 60989–60990

### Defense Nuclear Facilities Safety Board

#### NOTICES

Senior Executive Service:  
Performance Review Board; membership, 60990

### Drug Enforcement Administration

#### NOTICES

*Applications, hearings, determinations, etc.:*

Cambrex North Brunswick, Inc., 61043

Cerilliant Corp., 61043–61045

Cody Laboratories, Inc., 61045

Penick Corp., 61045

Siegfried, Inc., 61045–61046

### Education Department

#### NOTICES

Meetings:

Indian Education National Advisory Council, 60990–  
60991

Institutional Quality and Integrity National Advisory  
Committee, 60991–60994

Postsecondary education:

Accrediting agencies and State approval agencies for  
vocational and nurse education institutions; national  
recognition, 60994–60995

### Employee Benefits Security Administration

#### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 61047

### Employment and Training Administration

#### NOTICES

Agency information collection activities; proposals,  
submissions, and approvals, 61047–61048

### Environmental Protection Agency

#### RULES

Air quality implementation plans; approval and  
promulgation; various States:

California, 60962–60964

Hazardous waste program authorizations:

Florida, 60964–60967

#### PROPOSED RULES

Air quality implementation plans; approval and  
promulgation; various States:

California, 60974–60975

Hazardous waste program authorizations:

Florida, 60975

#### NOTICES

Air pollution control; new motor vehicles and engines:

California pollution control standards—

Off-cycle emission test requirements; Federal  
preemption waiver, 60995–60996

Meetings:

Clean Air Compliance Analysis Advisory Council, 60996  
Science Advisory Board, 60996–60997

Privacy Act:

Systems of records, 60997–60998

Superfund; response and remedial actions, proposed settlements, etc.:  
Forty-Third Street Bay Drum Site, FL, 60999

**Executive Office of the President**  
*See* Presidential Documents

**Export-Import Bank**

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 60999–61016

**Federal Aviation Administration**

**RULES**

Airworthiness directives:

Hartzell Propeller Inc., 60952–60954

PZL-Bielsko, 60954–60956

Valentin GmbH & Co., 60949–60952

Class E airspace, 60956–60957

**PROPOSED RULES**

Air traffic operating and flight rules, etc.:

IFR altitudes; Alaska mountainous area, 61127–61131

Airworthiness directives:

Raytheon, 60971–60974

**NOTICES**

Advisory circulars; availability, etc.:

Flight standards service schedule of charges outside United States, 61066–61067

Part 23 airplanes; flutter divergence, and control reversal, 61067

Reciprocating engine redesigned parts durability; guidance material, 61067

Turbine rotor strength requirements, 61067–61068

Aeronautical land-use assurance; waivers:

Manteo Airport, NC, 61068

Environmental statements; availability, etc.:

Chicago O'Hare International Airport, IL, 61068–61069

Meetings:

Aging Transport Systems Rulemaking Advisory Committee, 61069

Passenger facility charges; applications, etc.:

Bradford Regional Airport, PA, 61069–61070

Reports and guidance documents; availability, etc.:

Fuel tank systems requirements; maintenance and inspection instructions development process; policy statement, 61070

**Federal Communications Commission**

**NOTICES**

Meetings; Sunshine Act, 61016

**Federal Election Commission**

**NOTICES**

Meetings; Sunshine Act, 61016–61017

**Federal Maritime Commission**

**NOTICES**

Agreements filed, etc., 61017

Ocean transportation intermediary licenses:

Longyun Worldwide Forwarding Co. Ltd. et al., 61017–61018

**Federal Reserve System**

**NOTICES**

Banks and bank holding companies:

Change in bank control, 61018

**Fish and Wildlife Service**

**RULES**

Alaska National Interest Conservation Act; Title VIII implementation (subsistence priority):

Federal Subsistence Regional Advisory councils; membership qualifications, 60957–60962

**Food and Drug Administration**

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 61021–61025

**Forest Service**

**RULES**

Alaska National Interest Conservation Act; Title VIII implementation (subsistence priority):

Federal Subsistence Regional Advisory councils; membership qualifications, 60957–60962

**NOTICES**

Environmental statements; notice of intent:

Tongass National Forest, AK, 60976–60978

Meetings:

Resource Advisory Committees—

Davy Crockett National Forest, 60978

Lincoln County, 60978

Southwest Washington Provincial Advisory Committee, 60978

**General Services Administration**

**RULES**

Federal Acquisition Regulation (FAR):

Introduction; technical amendments

Correction, 60967

**Government Accountability Office**

**NOTICES**

Meetings:

Government Auditing Standards Advisory Council, 61018

**Health and Human Services Department**

*See* Centers for Disease Control and Prevention

*See* Food and Drug Administration

*See* Health Resources and Services Administration

*See* National Institutes of Health

*See* Substance Abuse and Mental Health Services Administration

**NOTICES**

Meetings:

Medical technologies; stimulating innovation, 61018–61019

**Health Resources and Services Administration**

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 61025

Grants and cooperative agreements; availability, etc.:

Preview Program; 2005 FY funding opportunities and application information, 61025–61026

Meetings:

Organ Transplantation Advisory Committee, 61026

**Homeland Security Department**

*See* Citizenship and Immigration Services Bureau

*See* Coast Guard

*See* Customs and Border Protection Bureau

*See* Transportation Security Administration

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 61033–61034

**Indian Affairs Bureau****RULES**

Land and water:

- Indian Reservation Roads Program
- Implementation delay, 60957

**NOTICES**

Tribal-State Compacts approval; Class III (casino) gambling:  
Puyallup Tribe, WA, 61036

**Interior Department**

See Fish and Wildlife Service

See Indian Affairs Bureau

See Land Management Bureau

**Internal Revenue Service****NOTICES**

Agency information collection activities; proposals,  
submissions, and approvals, 61084

**International Trade Administration****NOTICES**

Antidumping:

- Hand trucks and parts from—  
China, 60980–60985

**International Trade Commission****NOTICES**

Import investigations:

- Aspirin from—  
Turkey, 61039–61040

**Justice Department**

See Drug Enforcement Administration

**NOTICES**

Pollution control; consent judgments:

- Carthage, TX, 61040
- Chevron Phillips Chemical Co., LP, 61040
- Chief Consolidated Mining Co., 61040–61041
- Clyde, OH, 61041
- France Shipmanagement S.A., 61041–61042
- Mississippi Bakery, 61042
- Plainview, TX, 61042–61043
- Velsicol Chemical Corp., 61043

**Labor Department**

See Employee Benefits Security Administration

See Employment and Training Administration

**NOTICES**

Agency information collection activities; proposals,  
submissions, and approvals, 61046–61047

**Land Management Bureau****NOTICES**

Closure of public lands:

- California, 61036–61037

Realty actions; sales, leases, etc.:

- New Mexico, 61037–61038
- Oregon, 61038–61039

Resource management plans, etc.:

- Hollister Resource Area, CA, 61039

**Maritime Administration****NOTICES**

Agency information collection activities; proposals,  
submissions, and approvals, 61070–61071

**National Aeronautics and Space Administration****RULES**

Acquisition regulations:

- Administrative procedures and guidance, 60967–60968

Federal Acquisition Regulation (FAR):

- Introduction; technical amendments
- Correction, 60967

**NOTICES**

Meetings:

- Advisory Councils
- Education Advisory Committee, 61048

**National Highway Traffic Safety Administration****RULES**

Motor vehicle safety standards:

- Occupant crash protection—  
Device to prevent radio sound system from operating  
unless safety belts are fastened; petition denied,  
60968–60970

**NOTICES**

Motor vehicle safety standards:

- Frontal New Car Assessment Program, 61071–61078

**National Institutes of Health****NOTICES**

Meetings:

- Director's Council of Public Representatives, 61026–  
61027
- National Cancer Institute, 61027–61028
- National Eye Institute, 61028
- National Institute of Child Health and Human  
Development, 61028–61029
- National Institute of Diabetes and Digestive and Kidney  
Diseases, 61030
- National Institute of Environmental Health Sciences,  
61028
- National Institute of General Medical Sciences, 61029
- National Institute of Neurological Disorders and Stroke,  
61029–61030
- Scientific Review Center, 61030–61032

**National Oceanic and Atmospheric Administration****RULES**

Fishery conservation and management:

- Alaska; fisheries of Exclusive Economic Zone—  
Pollock, 60970

**NOTICES**

Meetings:

- Gulf of Mexico Fishery Management Council, 60985–  
60986
- New England Fishery Management Council, 60986

Permits:

- Scientific research, 60986–60988

**National Telecommunications and Information  
Administration****NOTICES**

Senior Executive Service:

- Performance Review Board; membership, 60988

**Nuclear Regulatory Commission****NOTICES**

Agency information collection activities; proposals,  
submissions, and approvals, 61048–61049

Reports and guidance documents; availability, etc.:

- Safety conscious work environment; establishing and  
maintaining, 61049–61058

**Postal Service****RULES**

Postage meters:

- Manufacture and distribution; authorization
- Correction, 61085

**Presidential Documents****PROCLAMATIONS***Special observances:*

- Columbus Day (Proc. 7829), 61133–61136
- General Pulaski Memorial Day (Proc. 7830), 61137–61138
- National School Lunch Week (Proc. 7831), 61139–61142

**ADMINISTRATIVE ORDERS**

- Foreign Assistance Act of 1961; availability of funds (Presidential Determination No. 2004-54 of September 30, 2004), 60945
- Immigration; refugee admissions numbers and authorization (Presidential Determination No. 2004-53 of September 30, 2004, 60943–60944

**Securities and Exchange Commission****NOTICES**

- Agency information collection activities; proposals, submissions, and approvals, 61058–61060
- Investment Company Act of 1940:
  - Security Benefit Life Insurance Co., et al., 61060–61065
- Public Utility Holding Company Act of 1935 filings, 61065–61066

**State Department****NOTICES**

- Art objects; importation for exhibition:
  - Mauritshuis Project: An Introduction to Dutch 17th Century Painting, 61066
- Meetings:
  - International Telecommunication Advisory Committee, 61066

**State Justice Institute****NOTICES**

- Reports and guidance documents; availability, etc.:
  - Grants, cooperative agreements, and contracts; guidelines, 61087–61126

**Substance Abuse and Mental Health Services Administration****NOTICES**

- Agency information collection activities; proposals, submissions, and approvals; comment request, 61032–61033

**Surface Transportation Board****NOTICES**

- Rail carriers:
  - Control exemptions—
    - Broe, Patrick D., et al., 61078
- Railroad operation, acquisition, construction, etc.:
  - CSX Transportation, Inc., 61078–61079

**Transportation Department**

- See* Federal Aviation Administration
- See* Maritime Administration
- See* National Highway Traffic Safety Administration
- See* Surface Transportation Board
- See* Transportation Statistics Bureau

**Transportation Security Administration****NOTICES**

- Agency information collection activities; proposals, submissions, and approvals, 61036

**Transportation Statistics Bureau****NOTICES**

- Agency information collection activities; proposals, submissions, and approvals, 61079
- Air carrier reporting and recordkeeping requirements:
  - Alaskan mail carriers; T-100 traffic reporting; weekly collection pilot program, 61079–61083

**Treasury Department**

- See* Internal Revenue Service
- 

**Separate Parts In This Issue****Part II**

- State Justice Institute, 61087–61126

**Part III**

- Transportation Department, Federal Aviation Administration, 61127–61131

**Part IV**

- Executive Office of the President, Presidential Documents, 61133–61138

**Part V**

- Executive Office of the President, Presidential Documents, 61139–61142
- 

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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---

**CFR PARTS AFFECTED IN THIS ISSUE**

---

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR****Proclamations:**

7829.....	61135
7830.....	61137
7831.....	61141

**Administrative Orders:**

## Presidential

## Determinations:

No. 2004-53 of September 30, 2004 .....	60943
No. 2004-54 of September 30, 2004 .....	60945

**7 CFR**

987 .....	60947
-----------	-------

**14 CFR**

39 (3 documents) .....	60949,
	60952, 60954
71 .....	60956

**Proposed Rules:**

39 .....	60971
95 .....	61128

**25 CFR**

170 .....	60957
-----------	-------

**36 CFR**

242 .....	60957
-----------	-------

**39 CFR**

501 .....	61085
-----------	-------

**40 CFR**

52 .....	60962
271 .....	60964

**Proposed Rules:**

52 .....	60974
271 .....	60975

**48 CFR**

Ch. I .....	60967
52 .....	60967
1852 .....	60967
1853 .....	60967
1872 .....	60967

**49 CFR**

571 .....	60968
-----------	-------

**50 CFR**

100 .....	60957
679 .....	60970

Presidential Documents

Title 3—  
  
The President

Presidential Determination No. 2004–53 of September 30, 2004  
  
**Presidential Determination on FY 2005 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended**

Memorandum for the Secretary of State

In accordance with section 207 of the Immigration and Nationality Act (the “Act”) (8 U.S.C. 1157), as amended, and after appropriate consultations with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 70,000 refugees to the United States during FY 2005 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 2005 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 70,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 2005 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

Africa .....	20,000
East Asia .....	13,000
Europe and Central Asia .....	9,500
Latin America/Caribbean .....	5,000
Near East/South Asia .....	2,500
Unallocated Reserve .....	20,000

The 20,000 unallocated refugee numbers shall be allocated to regional ceilings as needed. Upon providing notification to the Judiciary Committees of the Congress, you are hereby authorized to use unallocated numbers in regions where the need for additional numbers arises.

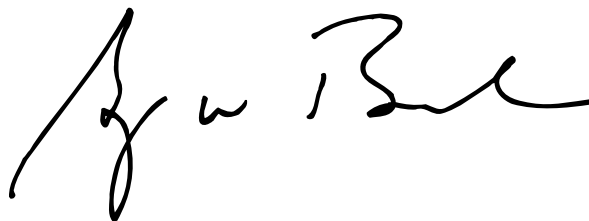
Additionally, upon notification to the Judiciary Committees of the Congress, you are further authorized to transfer unused numbers allocated to a particular region to one or more other regions, if there is a need for greater numbers for the region or regions to which the numbers are being transferred. Consistent with section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

An additional 10,000 refugee admissions numbers shall be made available during FY 2005 for the adjustment to permanent resident status under section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)), and after appropriate consultation with the Congress, I also specify that, for FY 2005, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

- a. Persons in Vietnam
- b. Persons in Cuba
- c. Persons in the former Soviet Union
- d. In exceptional circumstances, persons identified by a U.S. Embassy in and location

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.



THE WHITE HOUSE,  
*Washington, September 30, 2004.*

## Presidential Documents

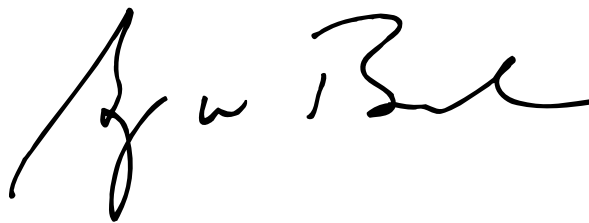
**Presidential Determination No. 2004-54 of September 30, 2004**

### **Transfer of Funds under Section 610 of the Foreign Assistance Act**

#### **Memorandum for the Secretary of State**

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 610 of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine it necessary for the purposes of the Act that \$24,852,500 made available under Chapter 3 of Part I of the Act for Fiscal Year 2004 be transferred to, and consolidated with, funds made available under Chapter 4 of Part II of the Act, and such funds are hereby transferred and consolidated.

You are hereby authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

A handwritten signature in black ink, appearing to read "G. W. Bush", is centered on the page.

THE WHITE HOUSE,  
*Washington, September 30, 2004.*

# Rules and Regulations

Federal Register

Vol. 69, No. 198

Thursday, October 14, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 987

[Docket No. FV04-987-2 FR]

#### Domestic Dates Produced or Packed in Riverside County, CA; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Date Administrative Committee (committee) for the 2004-05 and subsequent crop years from \$0.75 to \$0.85 per hundredweight of dates handled. The committee locally administers the marketing order which regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The committee recommended increasing the assessment rate because additional revenues are needed to fund program operations. The crop year begins October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* October 15, 2004.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Program Analyst, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 127 and Marketing Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning on October 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition,

provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the committee for the 2004-05 and subsequent crop years from \$0.75 to \$0.85 per hundredweight of assessable dates handled.

The California date marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and producer-handlers of California dates in the production area and are familiar with the committee's needs and with the costs for goods and services in their local area. As such, they are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting, and all directly affected persons have an opportunity to participate in the deliberations and provide input.

For the 2003-04 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on June 30, 2004, and unanimously recommended 2004-05 crop year expenditures of \$223,000 and an assessment rate of \$0.85 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were \$225,365. The recommended assessment rate of \$0.85 is \$0.10 higher than the rate currently in effect. The increase in the assessment rate is needed to fund the committee's current budget, and maintain its financial operating reserve at about \$36,000, a level which the committee deems satisfactory.

The budgeted administrative expenses for the 2004-05 crop year include \$90,427 for labor and office expenses. This compares to \$123,710 in budgeted expenses in 2003-04. In addition, \$112,499 has been budgeted for marketing and promotion under the program for the 2004-05 crop year. This compares to \$101,655 in budgeted marketing and promotion expenses for the 2003-04 crop year. A total of

\$20,074 is budgeted as a contingency reserve for 2004–05. A contingency reserve of \$10,000 was included in the budget for 2003–04.

The committee administers a surplus account wherein the proceeds from sales of cull dates are deposited for subsequent use by the committee in covering the surplus pool share of the committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the committee for sale to non-human food product outlets. For the 2004–05 crop year, the committee voted to use \$2,000 from the surplus account to help fund the committee's budget of \$223,000.

The assessment rate of \$0.85 per hundredweight of assessable dates was derived by applying the following formula where:

A = Cull Surplus Fund (\$2,000);  
 B = 2004–05 expected shipments (260,000 hundredweight);  
 C = 2004–05 expenses (\$223,000);  
 (C – A) B = \$0.85 per hundredweight.

Estimated shipments should provide \$221,000 in assessment income. Income derived from handler assessments and \$2,000 from the cull surplus fund would be adequate to cover budgeted expenses. Funds in the financial operating reserve are expected to total about \$35,700 by September 30, 2005, and therefore will be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years as required under § 987.72(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2004–05 budget and those

for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 124 producers of dates in the production area and approximately 10 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural service firms as those having annual receipts of less than \$5,000,000, and defines small agricultural producers as those having annual receipts of less than \$750,000.

An industry profile shows that four of the 10 handlers (40 percent) shipped over \$5,000,000 of dates and could be considered large handlers by the Small Business Administration. Six of the 10 handlers (60 percent) shipped under \$5,000,000 of dates and could be considered small handlers. An estimated 7 producers, or less than 6 percent, of the 124 total producers, would be considered large producers with annual incomes over \$750,000. The majority of handlers and producers of California dates may be classified as small entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2004–05 and subsequent crop years from \$0.75 to \$0.85 per hundredweight of assessable dates handled. The committee unanimously recommended 2004–05 expenditures of \$223,000 and the \$0.85 per hundredweight assessment rate at their meeting on June 30, 2004. The assessment rate of \$0.85 is \$0.10 higher than the rate currently in effect. The quantity of assessable dates for the 2004–05 crop year is estimated at 260,000 hundredweight. Thus, the \$0.85 per hundredweight rate should provide \$221,000 in assessment income. This, along with approximately \$2,000 from the surplus account, would be adequate

to meet the committee's 2004–05 crop year expenses.

The budgeted administrative expenses for the 2004–05 crop year include \$90,427 for labor and office expenses. This compares to \$123,710 in budgeted expenses in 2003–04. In addition, \$112,499 has been budgeted for marketing and promotion under the marketing order for the 2004–05 crop year. This compares to \$101,655 in budgeted marketing and promotion expenses for the 2003–04 crop year. A total of \$20,074 is budgeted as a contingency reserve. A contingency reserve totaling \$10,000 was budgeted last year.

The committee administers a surplus account wherein the proceeds from sales of cull dates are deposited for subsequent use by the committee in covering the surplus pool share of the committee's expenses. For the 2004–05 crop year, the committee voted to use \$2,000 from the surplus account to help fund the committee's budget of \$223,000.

The committee reviewed and unanimously recommended 2004–05 expenditures of \$223,000 which include marketing and promotion programs. Prior to arriving at this budget, the committee considered alternative expenditure levels and alternative assessment levels. The committee agreed that the increased assessment rate was appropriate to cover expenses and maintain its financial operating reserve at a satisfactory level (\$35,700). The assessment rate of \$0.85 per hundredweight of assessable dates was then determined by applying the following formula where:

A = Cull Surplus Fund (\$2,000);  
 B = 2004–05 expected shipments (260,000 hundredweight);  
 C = 2004–05 expenses (\$223,000);  
 (C – A) B = \$0.85 per hundredweight.

Estimated shipments should provide \$221,000 in assessment income. Income derived from handler assessments and \$2,000 from the cull surplus fund would be adequate to cover budgeted expenses. Funds in the financial operating reserve are expected to total about \$35,700 by September 30, 2005, and therefore will be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years as required under § 987.72(c)).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2004–05 season could range between \$40 and \$120 per hundredweight of dates. Therefore, the estimated assessment revenue for the

2004–05 crop year as a percentage of total grower revenue could range between .7 and 2.1 percent.

This action increases the assessment obligation imposed on handlers under the Federal marketing order. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the June 30, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on August 16, 2004 (69 FR 50339). Copies of the proposed rule were also mailed or sent via facsimile to all date handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 15, 2004, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of the rule until 30 days after publication

in the **Federal Register** because the 2004–05 crop year begins October 1, 2004, and the marketing order requires that the rate of assessment for each crop year apply to assessable dates handled during such period. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

#### List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

#### PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ 1. The authority citation for 7 CFR part 987 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 987.339 is revised to read as follows:

#### § 987.339 Assessment rate.

On and after October 1, 2004, an assessment rate of \$0.85 per hundredweight is established for California dates.

Dated: October 7, 2004.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 04–23042 Filed 10–13–04; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003–CE–56–AD; Amendment 39–13815; AD 2004–20–10]

**RIN 2120–AA64**

#### Airworthiness Directives; Valentin GmbH & Co. Taifun 17E Sailplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for all Valentin GmbH & Co. Taifun 17E sailplanes. This AD requires you to do an operational check of the front wing-

locking mechanism left and right, inspect stop key movement, inspect wing and fuselage side root ribs, inspect the wing side shear force fittings, and take any corrective actions that may be required. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct malfunction of wing-locking mechanism, which could result in failure of the wing-locking mechanism disengagement. This failure could lead to unlocking of wing in flight and consequent loss of control of the sailplane.

**DATES:** This AD becomes effective on November 24, 2004.

As of November 24, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

**ADDRESSES:** You may get the service information identified in this AD from KORFF + CO.KG, Dieselstrasse 5, D–63128 Dietzenbach, Germany.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–56–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Gregory M. Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

*What events have caused this AD?* The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Valentin GmbH & Co. Taifun 17E sailplanes. The LBA reports that during an investigation, an incorrect locked shear force fitting was found.

*What is the potential impact if FAA took no action?* Malfunction of wing-locking mechanism could result in failure of the wing attachment assembly. This failure could lead to unlocking of wing in flight and consequent loss of control of the sailplane.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Valentin GmbH & Co. Taifun 17E sailplanes. This proposal was published in the **Federal Register** as a notice of proposed

rulemaking (NPRM) on April 22, 2004 (69 FR 21771). The NPRM proposed to require you to do an operational check of the front wing-locking mechanism left and right, inspect stop key movement, inspect wing and fuselage side root ribs, inspect the wing side shear force fittings, and take any corrective actions that may be required.

#### Comments

*Was the public invited to comment?* We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

#### Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

#### Changes to 14 CFR Part 39—Effect on the AD

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, the

FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

#### Costs of Compliance

*How many sailplanes does this AD impact?* We estimate that this AD affects 25 sailplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected sailplanes?* We estimate the following costs to accomplish the inspections:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
2 work hours × \$65 per hour = \$130 .....	No parts needed for inspection .....	\$130	\$3,250

We estimate the following costs to accomplish replacement of the stop key F1-1300 that will be required based on the results of the inspections. We have

no way of determining the number of sailplanes that may need the stop key F1-1300 replaced or the number of sailplanes that may need additional

repair because of abrasion. We also do not know the cost that will be associated with any abrasion repair:

Labor cost	Parts cost	Total cost per sailplane
3 workhours × \$65 per hour = \$195 .....	\$16 each × 2 (2 are required) = \$32 .....	\$227

#### Regulatory Findings

*Will this AD impact various entities?* We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**.

Include "AD Docket No. 2003-CE-56-AD" in your request.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

**2004-20-10 Valentin GmbH & Co.:**  
Amendment 39-13815; Docket No. 2003-CE-56-AD.

#### When Does This AD Become Effective?

(a) This AD becomes effective on November 24, 2004.

#### What Other ADs Are Affected by This Action?

(b) None.

#### What Sailplanes Are Affected by This AD?

(c) This AD affects the following sailplane models and serial numbers that are certificated in any category: Valentin GmbH & Co. Taifun 17E, all serial numbers are affected except those where Service Bulletin 23-818 has been complied with.

#### What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of an incorrectly locked shear force fitting, which may have caused wing-locking mechanism disengagement. The actions specified in this AD are intended to detect and correct malfunction of the wing-locking mechanism, which could result in failure of the wing attachment assembly. This failure could lead to unlocking of wing in flight and subsequent loss of control of the sailplane.

#### What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
<p>(1) <i>Perform the following actions with the motor glider rigged..</i></p> <p>(i) An operational check of the front wing locking mechanism left and right for damage, deformation, and smooth operation over full travel range.</p> <p>(ii) A visual inspection through the operation hole on the bottom side of the wings, ensure the bolt (item 3 of drawing F1-1340) is in the fully locked front position. Confirm a fully locked position by withdrawal of the signal pin (Item 15 and Item 11 of drawing F1-1340) into the wing's upper surface and ensure the pin is level with that surface. While in this full front stop position, measure the potential movement of the bolt. If residual movement of 2mm or greater exists, replace the stop key (Item 25 of drawing F1-1340).</p>	<p>Inspect within 25 hours time-in-service (TIS) after November 24, 2004 (the effective date of this AD). Repetitively inspect every 25 hours TIS thereafter.</p>	<p>Inspect following the Korff + CO.KG Service Bulletin SB-KOCO 03/818, dated December 12, 2002 (German LBA approved December 20, 2002).</p>
<p>(2) <i>Perform the following actions with the motor glider derigged.</i></p> <p>(i) An operational check of the front wing locking mechanism left and right for damage, deformation, and smooth operation over full travel range.</p> <p>(ii) A visual inspection of the motor glider for stop key movement. You should not be able to move the stop key by hand more than 2mm backwards in the full locked front position.</p>	<p>Inspect within 25 hours TIS after November 24, 2004 (the effective date of this AD). Repetitively inspect every 25 hours TIS thereafter.</p>	<p>Inspect following the Korff + CO.KG Service Bulletin SB-KOCO 03/818, dated December 12, 2002 (German LBA approved December 20, 2002).</p>
<p>(3) If deficiencies are found during the inspections required in paragraphs (e)(1) and (e)(2), correct, repair, or replace the defective parts.</p>	<p>Do corrective actions prior to further flight .....</p>	<p>Correct, repair, or replace defective parts following the Korff + CO.KG Service Bulletin SB-KOCO 03/818, dated December 12, 2002 (German LBA approved December 20, 2002).</p>
<p>(4) <i>Perform the following inspections, and if any of the following conditions are found, contact the manufacturer at the address specified in paragraph (g) of this AD for FAA-approved corrective action and perform the corrective action.</i> You must send a copy of correspondence you send to the manufacturer to the FAA at the address in paragraph (f).</p> <p>(i) Inspect the wing side shear force fittings for abrasion, deformation, and correct screwing to the root rib.</p> <p>(ii) Inspect the wing and fuselage side root ribs for damage (delamination) and around all fittings (shear force fittings, wing connection studs, wing connection bushings, connection to the telescopic rods, rear center studs and bushings). Inspect for defective bonding to the shells as well as defective connections to the spar or the wing spar box.</p>	<p>Inspect within 25 hours TIS after November 24, 2004 (the effective date of this AD). Repetitively inspect every 25 hours TIS thereafter. Perform corrective action prior to further flight.</p>	<p>Inspect following the Korff + CO.KG Service Bulletin SB-KOCO 03/818, dated December 12, 2002 (German LBA approved December 20, 2002).</p>
<p>(5) When corrective action or maintenance is done, do an operational check of the motor glider in the rigged and derigged configuration.</p>	<p>After corrective action or maintenance is done, you must do the operational check prior to further flight.</p>	<p>Do the operational check following the Korff + CO.KG Service Bulletin SB-KOCO 03/818, dated December 12, 2002 (German LBA approved December 20, 2002).</p>

**Note:** We recommend that you make the "Flight Manual" and "Instructions for Continued Airworthiness" changes that are listed under Actions: 5. of Korff + CO.KG Service Bulletin SB-KOCO 03/818, dated December 12, 2002 (German LBA approved December 20, 2002).

#### May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, FAA, Small

Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106. For information on any already approved alternative methods of compliance, contact Gregory M. Davison, Aerospace Engineer, Small Airplane Directorate, ACE-112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816-329-4130; facsimile: 816-329-4090.

**Does This AD Incorporate Any Material by Reference?**

(g) You must do the actions required by this AD following the instructions in Korff + CO.KG Service Bulletin SB-KOCO 03/818, dated December 12, 2002 (German LBA approved December 20, 2002). The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from KORFF + CO.KG, Dieselstrasse 5, D-63128 Dietzenbach, Germany. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**Is There Other Information That Relates to This Subject?**

(h) LBA airworthiness directive 2003-051, dated January 29, 2003; and

Korff + CO.KG Service Bulletin SB-KOCO 03/818, dated December 20, 2002, also address the subject of this AD.

Issued in Kansas City, Missouri, on September 29, 2004.

**Dorenda D. Baker,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-22715 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 86-ANE-7; Amendment 39-13822; AD 2004-21-01]

**RIN 2120-AA64**

**Airworthiness Directives; Hartzell Propeller Inc. (formerly Hartzell Propeller Products Division) Model HC-B5MP-3( )/M10282A( )+6 Five Bladed Propellers**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding an existing AD for certain Hartzell Propeller Inc. (formerly Hartzell Propeller Products Division) Model HC-B5MP-3( )/M10282A( )+6 five bladed propellers. That AD currently requires initial and repetitive torque check inspections on the attach bolts on certain model Hartzell HC-B5MP-3 five bladed propellers, and replacement of attach bolts if necessary. This AD

requires the same inspections, but reduces compliance time for the initial inspection on certain Short Brothers Ltd. Model SD3-30 airplanes to before further flight and within 100 hours time-in-service for propellers installed on certain Aerospatiale (Nord) Model 262A airplanes. This AD also requires repetitive torque check inspections at reduced intervals on SD3-30 airplanes, and requires additional visual inspections of mounting flanges, and threads in hub bolt holes, and replacement of attach bolts and hubs, if necessary. This AD results from four reports in the last 12 months of eleven cracked or failed propeller attach bolts on Short Brothers Model SD3-30 airplanes. We are issuing this AD to prevent propeller separation from the airplane.

**DATES:** Effective October 19, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 19, 2004.

We must receive any comments on this AD by December 13, 2004.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-ANE-7, 12 New England Executive Park, Burlington, MA 01803-5299.
- By fax: (781) 238-7055.
- By e-mail: [9-ane-adcomment@faa.gov](mailto:9-ane-adcomment@faa.gov).

You can get the service information referenced in this AD from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778-4200; fax (937) 778-4391.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:**

Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL

60018; telephone: (847) 294-7031; fax: (847) 294-7834.

**SUPPLEMENTARY INFORMATION:** On March 7, 1986, the FAA issued AD 86-06-02, Amendment 39-5259 (51 FR 10613, March 28, 1986). That AD requires initial and repetitive torque check inspections on the attach bolts on certain model Hartzell HC-B5MP-3 five bladed propellers installed on Aerospatiale (Nord) Model 262A airplanes modified by Supplemental Type Certificate (STC) SA2369SW, and Short Brothers Ltd. Model SD3-30 airplanes. Some SD3-30 airplanes are military surplus C23-A Sherpas airplanes. That AD was the result of investigations that revealed fretting wear between the engine and propeller mating flanges. The fretting wear results in loss of attach bolt preload, causing failure of the attach bolts. That condition, if not corrected, could result in propeller separation from the airplane.

**Actions Since AD 86-06-02 Was Issued**

Since February 2004, we received four reports of failed propeller attach bolts, part number (P/N) B-3339:

- In February 2004, an operator reported a cracked Hartzell propeller attach bolt. The operator discarded the bolt and we could not perform a metallurgical investigation on the bolt.
- In June of 2004, another operator reported two broken propeller attach bolts. Both bolts were examined and one was selected for metallurgical investigation. This bolt was found to meet type design.

• In September of 2004, the Milwaukee Flight Standards District Office informed us that they received an operator's report of seven cracked or failed propeller attach bolts. All seven bolts were installed on the same propeller, and were found after a pilot reported problems with engine controls. We contacted Hartzell for assistance in investigating the bolt failure. The propeller hub and engine flange are being investigated for fretting, flatness, and thread damage.

• In late September of 2004, during the review of the maintenance history of one of the above propellers, we found a fourth event of a cracked propeller attach bolt.

**Relevant Service Information**

We have reviewed and approved the technical contents of Hartzell Alert Service Bulletin (ASB) A203A, dated January 5, 1995, that describes procedures for performing initial and repetitive inspections of attach bolts and if necessary, visual inspections of propeller mounting flanges.

### Differences Between This AD and the Service Information

Although Hartzell ASB A203A, dated January 5, 1995, requires an initial torque check inspection within the next 100 hours TIS from the effective date of the original bulletin (dated September 2, 1994) for Short Brothers Ltd. Model SD3-30 airplanes, this AD requires an initial torque check inspection before further flight for SD3-30 airplanes. Also, although that ASB requires an initial torque check inspection within the next 120 hours TIS from the effective date of the original bulletin (September 2, 1994) for Aerospatiale (Nord) Model 262A airplanes, this AD requires an initial torque check inspection within 100 hours TIS for 262A airplanes.

### FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Model HC-B5MP-3( )/M10282A( )+6 five bladed propellers of the same type design installed on Aerospatiale (Nord) Model 262A airplanes modified by STC SA2369SW, and Short Brothers Ltd. Model SD3-30 airplanes. We are issuing this AD to prevent propeller separation from the airplane. This AD requires the following:

- Before further flight, performing an initial torque check inspection of the propeller attach bolts on Short Brothers Ltd. Model SD3-30 airplanes unless already done within the last 120 hours TIS before the effective date of this AD; and
- Repetitive torque check inspections of the propeller attach bolts within 120 hours TIS from the last inspection.
- Within 100 hours TIS after the effective date of this AD, performing an initial torque check inspection of the propeller attach bolts on Aerospatiale (Nord) Model 262A airplanes; and
- Repetitive torque check inspections of the propeller attach bolts within 100 hours TIS from the last inspection.
- If the bolts fail the torque check, then visually inspect threads in hub bolt holes, and replace attach bolts and hub if necessary.

You must use the service information described previously to perform the actions required by this AD.

### FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and

that good cause exists for making this amendment effective in less than 30 days.

### Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

### Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 86-ANE-7" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at <http://www.faa.gov/language> and <http://www.plainlanguage.gov/>.

### Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

### Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 86-ANE-7" in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Amendment 39-5259 (51 FR 10613, March 28, 1986), and by adding a new airworthiness directive, Amendment 39-XXXXX, to read as follows:

**2004-21-01 Hartzell Propeller Inc.**  
(formerly Hartzell Propeller Products Division): Amendment 39-13822. Docket No. 86-ANE-7. Supersedes AD 86-06-02, Amendment 39-5259.

#### Effective Date

- (a) This airworthiness directive (AD) becomes effective October 19, 2004.

#### Affected ADs

- (b) This AD supersedes AD 86-06-02.

#### Applicability

(c) This AD applies to Hartzell Propeller Inc. (formerly Hartzell Propeller Products Division) Model HC-B5MP-3()/M10282A() +6 five-bladed propellers installed on, Aerospatiale (Nord) Model 262A airplanes modified by Supplemental Type Certificate (STC) SA2369SW, and Short Brothers Ltd. Model SD3-30 airplanes.

#### Unsafe Condition

(d) This AD results from four reports in the last 8 months of eleven cracked or failed Hartzell propeller attach bolts, part number (P/N) B-3339, on Short Brothers Model SD3-

30 airplanes. The actions specified in this AD are intended to prevent propeller separation from the airplane.

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

#### **Torque Check Requirements for Short Brothers Ltd. Model SD3-30 Airplanes**

(f) Before further flight, for propellers installed on Short Brothers Ltd. Model SD3-30 airplanes, do the following:

(1) Perform an initial torque check inspection of the Hartzell propeller attach bolts, P/N B-3339, unless already done within 120 hours time-in-service (TIS) before the effective date of this AD, and thereafter, within 120 hour TIS intervals since the last inspection. Use Procedure #1 "Mounting Bolt Torque Check" of Hartzell Alert Service Bulletin (ASB) A203A, dated January 5, 1995, to do the inspections.

(2) If the torque check fails, remove the propeller and go to paragraph (h) of this AD.

#### **Torque Check Requirements for Aerospatiale (Nord) Model 262A Airplanes Modified by STC SA2369SW**

(g) For propellers installed on Aerospatiale (Nord) Model 262A airplanes modified by STC SA2369SW, do the following:

(1) Perform an initial torque check inspection of the Hartzell propeller attach bolts, P/N B-3339, within 100 hours TIS after the effective date of this AD, and thereafter, within 100 hour TIS intervals since the last inspection. Use Procedure #1 "Mounting Bolt Torque Check" of Hartzell Alert Service Bulletin (ASB) A203A, dated January 5, 1995, to do the inspections.

(2) If the torque check fails, remove the propeller and go to paragraph (h) of this AD.

#### **Inspection and Rework of Engine and Propeller Mounting Flange Surfaces and Hub Mounting Bolt Holes**

(h) When the propeller is removed due to failing the torque check in Procedure #1 of Hartzell ASB A203A, dated January 5, 1995, inspect and rework if necessary, the engine and propeller mounting flange surfaces. Use Procedure #2 "Engine/Propeller Mounting Flanges" of Hartzell ASB A203A, dated January 5, 1995, to do the inspections and rework. Also inspect the hub mounting bolt holes as follows:

(1) Clean bolt holes using Stoddard solvent or equivalent and a soft bristle brush.

(2) Visually inspect the area around the bolt holes. No deformations, evidence of rework, depressions, or protrusions around bolt holes are permitted, except for an edge chamfer of the bolt hole up to 0.030 inch.

(3) Using a 10X magnification, and an appropriate light source, visually inspect threads for chipping, missing material, deformation, and scratches. No damage is permitted.

(4) Using a new P/N B-3339 bolt, check threads by threading bolt by hand into the bolt hole. The bolt must thread in easily with no binding.

(5) Any hub with a bolt hole showing one or more of the prohibited conditions specified in paragraphs (h)(2) through (h)(4) must be removed from service.

#### **Preparation of Propeller Attach Bolts**

(i) Before installing any Hartzell propeller attach bolt P/N B-3339, apply anti-seize compound MIL-PRF-83483, to the threaded surfaces of the attach bolt. Do not use any other anti-seize compound on attach bolts.

#### **Preparation of Propeller Mounting and Engine Flanges**

(j) Before installing a Hartzell HC-B5MP-3()/M10282A()+6 propeller, the propeller mounting flange and engine flange must be clean and dry. Do not use anti-fretting compounds on the flanges. You may install an FAA-approved Pratt & Whitney shim between the propeller mount flange and engine flange.

#### **Alternative Methods of Compliance**

(k) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

#### **Special Flight Permits**

(l) Under 14 CFR part 39.23, special flight permits are prohibited.

#### **Material Incorporated by Reference**

(m) You must use Hartzell Alert Service Bulletin A203A, dated January 5, 1995, to perform the procedures referenced by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778-4200; fax (937) 778-4391. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

#### **Related Information**

(n) Information on propeller removal and installation procedures can be found in Hartzell Propeller Inc. Service Instruction 140A.

Issued in Burlington, Massachusetts, on October 4, 2004.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

FR Doc. 04-22728 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 2003-CE-68-AD; Amendment 39-13823; AD 2004-21-02]

**RIN 2120-AA64**

#### **Airworthiness Directives; Przedsiębiorstwo Doswiadczalno-Produkcyjne Szybownictwa "PZL-Bielsko" Model SZD-50-3 "Puchacz" Sailplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for all Przedsiębiorstwo Doswiadczalno-Produkcyjne Szybownictwa "PZL-Bielsko" (PZL-Bielsko) Model SZD-50-3 "Puchacz" sailplanes. This AD requires you to repetitively inspect the front and back of the fuselage front bulkhead attachment fitting for cracks and replace the attachment fitting if any cracks are found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this AD to detect and correct cracks in the fuselage front bulkhead attachment fitting, which could result in structural failure of the bulkhead. This failure could lead to loss of control of the sailplane.

**DATES:** This AD becomes effective on November 29, 2004.

As of November 29, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

**ADDRESSES:** You may get the service information identified in this AD from Przedsiębiorstwo Doswiadczalno-Produkcyjne Szybownictwa PZL-Bielsko, ul. Cieszyńska 325, 43-300 Bielsko-Biala; telephone: +48 033 812 50 21; facsimile: +48 033 812 37 39.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-68-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4130; facsimile: (816) 329-4090.

**SUPPLEMENTARY INFORMATION:**

## Discussion

### *What events have caused this AD?*

The General Inspectorate of Civil Aviation (GICA), which is the airworthiness authority for Poland, recently notified FAA that an unsafe condition may exist on all PZL-Bielsko Model SZD-50-3 "Puchacz" sailplanes. The GICA reports that cracks were detected in the front bracket console mounted on the fuselage front bulkhead.

*What is the potential impact if FAA took no action?* This condition, if not detected and corrected, could cause the fuselage front bulkhead to fail. Failure of the fuselage front bulkhead could result in loss of control of the sailplane.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all PZL-Bielsko Model SZD-50-3 "Puchacz" sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 21, 2004 (69 FR 21444). The NPRM proposed to require you to repetitively inspect the front and back of the fuselage front bulkhead attachment fitting for cracks, and replace any cracked attachment fitting found.

*Is there a modification I can incorporate instead of repetitively inspecting the front and back of the fuselage front bulkhead attachment fitting for cracks?* The FAA has determined that long-term continued operational safety would be better assured by design changes that remove

the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, FAA will continue to work with PZL-Bielsko in performing further tests to determine the cause of the cracking and to provide a corrective action that would terminate the need for repetitive inspections.

*What is the difference between this AD and the service information?* The manufacturer's service information allows continued flight if cracks are found in the fuselage front bulkhead attachment fitting that do not exceed certain limits. The applicable service bulletin specifies replacement of the fuselage front bulkhead attachment fitting only if cracks are found exceeding this limit. This AD will not allow continued flight if any crack is found. FAA policy is to disallow sailplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The fuselage front bulkhead is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

## Comments

*Was the public invited to comment?* We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

## Conclusion

*What is FAA's final determination on this issue?* We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

## Changes to 14 CFR Part 39—Effect on the AD

*How does the revision to 14 CFR part 39 affect this AD?* On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

## Costs of Compliance

*How many sailplanes does this AD impact?* We estimate that this AD affects 8 sailplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected sailplanes?* We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
2 workhours × \$65 per hour = \$130 .....	Not applicable .....	\$130	\$130 × 8 = \$1,040.

We estimate the following costs to accomplish any necessary replacement that will be required based on the

results of this inspection. We have no way of determining the number of

sailplanes that may need such a replacement:

Labor cost	Parts cost	Total cost per sailplane
10 workhours × \$65 per hour = \$650 .....	\$680	\$650 + \$680 = \$1,330.

## Regulatory Findings

### *Will this AD impact various entities?*

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Will this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003-CE-68-AD" in your request.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

**2004–21–02 Przedsiębiorstwo****Doswiadczalno-Produkcyjne****Szybownictwa “PZL-Bielsko”:**

Amendment 39–13823; Docket No. 2003–CE–68–AD.

**When Does This AD Become Effective?**

(a) This AD becomes effective on November 29, 2004.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Sailplanes Are Affected by This AD?**

(c) This AD affects Model SZD–50–3 “Puchacz” sailplanes, all serial numbers, that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this AD to detect and correct cracks in the fuselage front bulkhead attachment fitting, which could result in structural failure of the bulkhead. This failure could lead to loss of control of the sailplane.

**What Must I Do To Address This Problem?**

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Using a fluorescent dye-penetrant or dye-check method, inspect the front and back of the fuselage front bulkhead attachment fitting for cracks.	Within the next 25 hours time-in-service (TIS) after November 29, 2004 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 12 calendar months.	Follow Przedsiębiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko (PDPS “PZL-Bielsko”) Mandatory Bulletin No. BE–048/SZD–50–3/2000 “Puchacz”, dated June 6, 2000.
(2) If cracks are found during any inspection required in paragraph (e)(1) of this AD, replace the fuselage front bulkhead attachment fitting.	Prior to further flight after any inspection required in paragraph (e)(1) of this AD in which cracks are found. After replacing the fuselage front bulkhead attachment fitting, continue with the repetitive inspections required in paragraph (e)(1) of this AD.	Follow Przedsiębiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko (PDPS “PZL-Bielsko”) Mandatory Bulletin No. BE–049/SZD–50–3/2000 “Puchacz”, dated September 14, 2000.

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

**Does This AD Incorporate Any Material by Reference?**

(g) You must do the actions required by this AD following the instructions in Przedsiębiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko (PDPS “PZL-Bielsko”) Mandatory Bulletin No. BE–048/SZD–50–3/2000 “Puchacz”, dated June 6, 2000; and Przedsiębiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko (PDPS “PZL-Bielsko”) Mandatory Bulletin No. BE–049/SZD–50–3/2000 “Puchacz”, dated September 14, 2000. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Przedsiębiorstwo Doświadczalno-Produkcyjne Szybownictwa PZL-Bielsko, ul. Cieszyńska 325, 43–300 Bielsko-Biala; telephone: +48 033 812 50 21; facsimile: +48

033 812 37 39. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**Is There Other Information That Relates to This Subject?**

(h) Republic of Poland AD Number SP–0059–2000–A, dated June 5, 2000, and AD Number SP–0094–2000–A, dated September 18, 2000, also address the subject of this AD.

Issued in Kansas City, Missouri, on October 5, 2004.

**Dorenda D. Baker,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–22812 Filed 10–13–04; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2004–18736; Airspace Docket No. 04–AEA–10]

**Establishment of Class E Airspace; Jonesville, VA**

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Jonesville, VA. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Lee County Airport, Jonesville, VA, under Instrument Flight Rules (IFR).

**DATES:** Effective 0901 UTC January 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis Jordan, airspace Specialist, Airspace Branch, Eastern Terminal Service Unit, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

## History

On August 11, 2004, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace area at Jonesville, VA, was published in the **Federal Register** (69 FR 48826–48827). The proposed action would provide controlled airspace to accommodate Standard Instrument Approach Procedures (SIAP), based on area navigation (RNAV), to Lee County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before September 10, 2004. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

## The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within an 8-mile radius of Lee County Airport, Jonesville, VA.

The FAA has determined that this regulation only involves an establish body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation administration amends 14 CFR part 71 as follows:

### PART 71—[AMENDED]

■ 1. Authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AEA VA E5 Jonesville, VA (New)

Lee County Airport, Jonesville, VA  
(Lat. 36°39'15" N., long. 83°13'04" W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Lee County Airport.

\* \* \* \* \*

Issued in Jamaica, New York, on October 5, 2004.

**John G. McCartney,**

*Staff Manager, Eastern Terminal Service Unit.*  
[FR Doc. 04–23070 Filed 10–13–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 170

**RIN 1076–AE17**

#### Indian Reservation Roads Program

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule; delay of implementation.

**SUMMARY:** On July 19, 2004, the Bureau of Indian Affairs published a Final Rule in the **Federal Register** (69 FR 43090) which established policies and procedures governing the Indian Reservation Roads (IRR) Program. The IRR Program is a part of the Federal Lands Highway Program established to address transportation needs of tribes. The program is jointly administered by the Bureau of Indian Affairs and the Federal Highway Administration's Federal Lands Highway Office. The

Final Rule has an announced effective date of October 1, 2004. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the **Federal Register** or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). Because of an inadvertent clerical error, the Final Rule was not received by Congress until September 13, 2004. Therefore, implementation of the Final Rule by the Bureau of Indian Affairs is delayed until November 13, 2004.

**DATES:** Implementation of the Final Rule published at 69 FR 43090 will be delayed until November 13, 2004.

#### FOR FURTHER INFORMATION CONTACT:

LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS 320 SIB, Washington, DC 20240, Telephone 202–513–7711 or Fax 202–208–4696.

Dated: October 7, 2004.

**Duncan L. Brown,**

*Regulatory Specialist, Office of the Executive Secretariat, Department of the Interior.*

[FR Doc. 04–22984 Filed 10–13–04; 8:45 am]

**BILLING CODE 4310–LH–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

**RIN 1018–AT58**

#### Subsistence Management Regulations for Public Lands in Alaska

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule clarifies the membership qualifications for Federal Subsistence Regional Advisory Councils established under Subsistence Management Regulations. The rulemaking is necessary because of an order entered by the U.S. District Court for Alaska. The final rule also removes the definition of “regulatory year” from Subpart A and places it in Subpart D of the regulations.

**DATES:** This final rule is effective November 15, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Chair, Federal Subsistence Board, c/o

U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786-3592.

#### SUPPLEMENTARY INFORMATION:

##### Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires that the Secretaries implement a program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). With the State unable to create a program in compliance with Title VIII by May 29, 1992, the Departments published a final rule in the **Federal Register** (57 FR 22940). On January 8, 1999 (64 FR 1276), the Departments published a final rule to extend jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule became effective October 1, 1999, and conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska v. Babbitt*.

Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program. The

Board's composition consists of a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of Federal Subsistence Management Regulations (Subparts A, B, C, and D).

The Board has reviewed this rule. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

##### Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 242.1 to 242.24, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 will apply to regulations found in this subpart.

##### Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, Alaska is divided into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands.

The Board reviews applications for membership on the Councils and makes recommendations to the Secretaries on the appointments to the Councils. The appointments are actually made by the Secretary of the Interior with the concurrence of the Secretary of Agriculture. The Regional Council members represent varied geographical areas, cultures, interests, and resource users within each region. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about

the region and subsistence uses of the public lands therein.

In 1998, Safari Club International and others filed suit in the U.S. District Court for the District of Alaska. This suit, as ultimately ruled upon, challenged the Board's customary and traditional use determination process, specific customary and traditional use determinations, and the balance of membership on the Regional Councils required by the Federal Advisory Committee Act (FACA) of 1972, Pub. L. 92-463, 86 Stat. 770 (*Safari Club v. Demientieff*, No. A98-0414-CV). In the meantime, the Secretary of the Interior, as part of a national review of advisory councils and in response to inquiries related to the Federal Subsistence Regional Advisory Councils in Alaska, requested the Board to examine its process for selecting nominees, and "see that" groups such as "residents of non-rural areas, commercial users of fish and wildlife resources and sportsmen are represented on the RACs." Based on Board recommendations following that in-depth examination, the Secretary of the Interior with concurrence of the Secretary of Agriculture in 2002 increased the size of nine of the Regional Councils; established the goal of making appointments to the Regional Council so as to achieve, where possible, a representation goal of 70% subsistence users and 30% sport/commercial users; revised the application/evaluation/selection process and forms; and approved a 3-year implementation period.

The Native Village of Venetie Tribal Government et al. were permitted to intervene in the Safari Club case and to challenge the 70/30 ratio representational goals established by the Secretaries. In January 2004, the U.S. District Court for Alaska entered an order dismissing the first two of Safari Club's claims and staying proceedings on the balance of Regional Council membership. The court did note in part with respect to the Regional Councils "that a council comprised of only subsistence users is not fairly balanced. Subsistence users are not the only persons directly affected by regional advisory council recommendations and subsistence users are not the only persons who might be interested in the management of fish and wildlife on federal lands \* \* \* Non-subsistence users of fish and wildlife are directly affected by management of fish and wildlife for subsistence uses and have a legitimate interest in the proper scientific management of same \* \* \*. While *all* points of view and *all* persons directly affected are not entitled to representation on a FACA committee, in

this instance, a cross-section of those affected by fish and wildlife management on federal public lands must be, in a reasonable and fair manner, afforded representation on regional advisory councils."

In ruling on a cross-claim of the Native Village of Venetie, the Court invalidated the Secretaries' policy of a goal of a 70/30 (subsistence users/sport and commercial users) membership ratio for failure to procedurally comply with the provisions of the Administrative Procedure Act found at 5 U.S.C. 553, and found that the policy should have been put before the public for comment in a rulemaking process. The District Court also ordered that the Secretaries promptly initiate and conclude a rulemaking to promulgate an appropriate Regional Council regulation consistent with FACA after compliance with 5 U.S.C. 553. The Secretaries initiated action with a proposed rule published on April 15, 2004, (69 FR 19964) and received testimony on the proposed rule at a May 2004 public hearing.

The underlying purpose of the change to § .11(b), while complying with the District Court's order, is to ensure continued compliance with both the fairly balanced representational requirements of FACA and the requirements and purposes of Title VIII of ANILCA in the appointments to the Regional Councils. In the change, the Secretaries recognize that some persons with interests other than subsistence uses are entitled under FACA to be represented on the Regional Councils, while recognizing that Congress intended in Title VIII for rural Alaska residents "who have personal knowledge of local conditions and requirements \* \* \* to have a meaningful role in the management of fish and wildlife and of subsistence uses on public lands in Alaska," and that Congress also intended that "large urban population centers" not be allowed to dominate the Regional Council system. The 70/30 representational goals of the change to § .11(b) assures the appropriate representation and meaningful majority role for rural Alaska residents, while providing an appropriate representation for the interests of nonrural residents and nonsubsistence users.

The change to § .11(b) establishes representational goals only in recognition that the actual appointments are dependent on the receipt of applications and nominations of highly qualified individuals. The change also requires the Board to identify to the Secretaries the interests that the applicant would represent. The

Secretaries retain their role in making the appointments to the Regional Councils. They also approve the Regional Council charters, wherein the size of each Regional Council is set. This is reflected in a change to identify the Secretaries as establishing the number of members for each Council. These changes to § .11(b) are consistent with FACA and ANILCA.

Additionally, we modified the definition of "regulatory year" for fish and shellfish fisheries to mean April 1 through March 31 and shifted the placement of this definition from § .4 to § .25. This change in dates allows more opportunity for development of public booklets informing subsistence users of regulatory changes, and the shift in placement of the definition within the regulations allows the Board more flexibility to make adjustments in the future.

#### **Summary of Comments Received on the Proposed Rule**

In addition to comments from the Regional Councils, we received written comments and/or oral testimony from 11 individuals or organizations. Their comments and the responses are summarized below.

*Comment:* Participating in the rulemaking process is costly and time consuming.

*Response:* We appreciate the time and effort that many individuals and organizations have dedicated to reviewing and commenting on the proposed rule.

*Comment:* The Regional Councils do not have the opportunity to comment on this rule. The comment period should be extended to allow the Councils to comment during their fall meetings.

*Response:* We were aware that the comment period would not coincide with the regular Regional Council meeting cycle. However, the Court ordered us to proceed promptly with a rulemaking action. Therefore, we made special effort to brief each Regional Council on the content of the proposed rule during its winter meeting. We then provided each Council with an opportunity to ask questions and to offer comments. Further, members of the Councils also had opportunity to comment on this rule during the public comment period.

*Comment:* The recommendations on this rule from the Regional Councils must be given deference in accordance with Section 805(c) of ANILCA.

*Response:* Section 805(c) requires the Secretaries to consider and give deference to Regional Councils' recommendations relative to the taking of fish and wildlife on the public lands.

The proposed membership balance rule is not a policy or regulation addressing the taking of fish and wildlife on public lands, and therefore, is not subject to the requirements of Section 805(c). We have, however, fully considered the comments from the Regional Councils in making our decision in this final rule.

*Comment:* The proposed change may potentially affect the interests of Tribal members. The proposed changes are subject to consultation with recognized tribes.

*Response:* We have provided all Alaskan Tribes and Native organizations the opportunity to provide comments on the proposed rule. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and Executive Order 13175 (November 6, 2000) "Consultation and Coordination with Indian Tribal Governments," government-to-government consultation is appropriate in cases where there is the potential for substantial direct effects on Tribes. In this case, redesignating a small number of seats to increase the diversity of viewpoints on the Regional Councils does not rise to the level of a substantial direct effect.

*Comment:* Without a significant majority of subsistence users on the Councils, it is difficult to get subsistence proposal passed.

*Response:* The 70/30 membership goal in the rule provides for a significant majority of members representing the subsistence interest on the Councils. The purpose of providing a goal for a minority of seats (30%) for sport and commercial interests is to ensure that those interests that are directly affected are represented on the Councils in compliance with FACA. We expect that all Regional Council members would continue to examine each proposal, policy, or plan and develop Regional Council recommendations based on recognized principles of fish and wildlife conservation, satisfaction of subsistence needs, and substantial evidence, consistent with Title VIII of ANILCA.

*Comment:* Rural communities should be allocated one seat on the Council. Regional Council composition needs to be representative of the population base of the rural communities. The proposal rule leaves out rural Alaska Natives and other rural residents because urban areas outnumber rural residents.

*Response:* This comment misconstrues both the statutory priority and the proposed rule. First, the statute creates a priority for all rural Alaska residents, not just rural Alaska Native residents. Further, by statute, all

members of a Regional Council must be residents of the region. Since most regions contain no nonrural areas, all members of those Councils will be rural Alaska residents. Even where the region includes nonrural areas, 70% of the members representing subsistence interests on the Council will likely be rural residents. Additionally, Alaska Natives are seated on every Regional Council. To have one representative from each rural community in Alaska sitting on the Councils would create excessively large and unworkable bodies. The current size of the Regional Councils and the diversity of their members provide good representation for the users in each region.

*Comment:* Sport users should be banned from sitting on these Councils. FACA's balanced representational requirement doesn't require the appointment of sport and commercial interests to the Councils. Representation from other interest groups (*i.e.*, commercial and sport interests) dilutes the purpose of the Councils.

*Response:* The U.S. District Court for Alaska found that FACA requires that a cross-section of those affected must be afforded reasonable representation on the Regional Councils. The court also stated that a Council comprised only of subsistence users is not fairly balanced and that sport and commercial users have legitimate points of view that must be considered. Consequently, inclusion of representatives of sport and commercial users is required and assures a diversity of views on the Regional Councils.

*Comment:* The wording should be modified as follows: " \* \* \* the Board will strive to ensure that *no more than* 70 percent of the members represent subsistence interests within a region and *no less than* 30 percent of the members represent commercial and sports interests within a region. The not less than 30 percent of the membership who represent the commercial and sport interests shall include at least one representative from the sport hunting community and one representative from the commercial fishing community in regions where these interests exist."

*Response:* We have modified the wording from the proposed rule to reflect that we shall include at least one representative from the sport community and one representative from the commercial community where possible. We have not made the other suggested change, believing it to be an unnecessarily restrictive stipulation.

*Comment:* Regional Councils should have an 80/20 representational balance.

*Response:* We have engaged in a thorough review and do not believe an

80/20 split would generally provide the best cross-section of interests and balanced membership. The 70/30 ratio provides a clear majority for subsistence users and a meaningful representation for other users. We have retained the 70/30 balance as a reasonable approach to providing the cross-section of interests suggested by the court ruling.

*Comment:* The Councils are already balanced because many members already participate in and represent various interests. The representational balance should be derived from the percentage of each individual member's activities. FACA does not require that each member make an arbitrary declaration of intent to support a single interest. An individual who primarily considers himself a subsistence user cannot represent the commercial fishing community simply because he holds a commercial fishing license. Similarly, a recreational hunter cannot represent the subsistence community simply because he eats the meat from the animal that he has hunted.

*Response:* We recognize that there are and have been individuals serving on the Councils who may participate in many types of uses (subsistence, sport and commercial) and are knowledgeable about the different interests. However, we are required by FACA to demonstrate that the Regional Advisory Councils continue to be fairly balanced in terms of points of view represented and the functions to be performed by the Council. Consequently, we have requested that people applying for Council seats declare their primary interest because it is the individual applicant who is the most knowledgeable about his/her viewpoints. This declaration should be supported by the information provided by the applicant and by an evaluation of the applicant's qualifications. This declaration assists the Federal Subsistence Board and the Secretaries in determining whether or not appointments to the Councils comply with the FACA requirements for balance.

*Comment:* Each Regional Council should have at least one member who will represent the public interest in the management of those Park Service units open to subsistence activities.

*Response:* In addition to the Regional Councils, ANILCA also designated a separate system of Subsistence Resource Commissions (16 U.S.C. 3118) to provide advice and recommendations for National Parks and Monuments where subsistence occurs. It has been our experience that the Regional Councils carefully consider recommendations of the Subsistence

Resource Commissions. The Regional Councils whose regions include national park or monument lands represented by an SRC also appoint three members to the nine-member SRC.

*Comment:* A "cross section of those affected" requires inclusion of other interests, such as conservation, Native heritage, and recreation interests. The Councils should include representation for the majority of people who do not want to see wildlife killed.

*Response:* ANILCA Title VIII is a statute that provides for the taking of fish and wildlife on Federal lands and waters. Therefore, on a committee providing advice on the taking of fish and wildlife resources, only representatives of groups involved in various aspects of consumptive use of the resources are appropriate members. Groups and individuals representing other interests have opportunity to express their opinions by providing public testimony at Regional Council and Board meetings.

*Comment:* Guidelines for Council composition should also maintain ethnic, gender, and geographical balance.

*Response:* Other than the guidelines for membership balance, there are no additional regulatory guidelines used by the Federal Subsistence Board in making appointment recommendations to the Secretaries. However, the Board does consider and attempt to maximize various diversity factors when making its recommendations. The Secretaries consider the Board's recommendations and must follow FACA and ANILCA requirements when making their appointments.

*Comment:* Current subsistence representatives should not be displaced by appointments representing sport or commercial interests.

*Response:* The 70/30 policy is to be implemented under a 3-year phase-in period to avoid displacement of sitting members. All members may conclude their current terms. We will maintain the FACA balance through appointment to open seats over a 3-year period.

*Comment:* The Seward Peninsula Regional Council should be increased in size from 10 to 13.

*Response:* The Board will examine this issue during the charter renewal process that will start at the fall 2004 meeting and conclude with charter approval by the Secretaries in 2005.

*Comment:* Evaluation panel guidelines should also include consideration of an applicant's command of traditional ecological knowledge.

*Response:* Evaluation panel guidelines are not a part of this

rulemaking process. However, the evaluation guidelines used by the Board do include an applicant's knowledge of subsistence customs and traditions.

*Comment:* The Board should evaluate all applicants by the same criteria.

*Response:* The Board evaluates all applicants on these same five criteria: knowledge of fish and wildlife resources in the region, knowledge of subsistence customs and traditions, knowledge of recreational and/or commercial uses, leadership, and communication.

*Comment:* The appointment of members creates divisiveness in rural communities. In every group or community there are always different factions.

*Response:* We expect that the persons appointed for membership are individuals who can overlook factionalism and engage in a meaningful dialog that considers the views of various users in their area.

*Comment:* The ethics disclosure requirement in the Regional Council charters is being applied too restrictively.

*Response:* The application of the ethics disclosure requirement is coordinated with the Department of the Interior's Office of the Solicitor and is not a part of this current rulemaking process.

### **Conformance With Statutory and Regulatory Authorities**

#### *National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis, and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the

Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992, and amended January 8, 1999, 64 FR 1276; June 12, 2001, 66 FR 31533; May 7, 2002, 67 FR 30559; and February 18, 2003, 68 FR 7703) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

#### *Compliance With Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

There is nothing in this rulemaking that affects the prior NEPA or Section 810 analysis and so no additional analysis is required for this rulemaking.

#### *Paperwork Reduction Act*

These changes do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, an information collection request unless it displays a currently valid OMB control number.

#### *Other Requirements*

**Economic Effects**—This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule is administrative in nature only and does not restrict any existing sport or

commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The number of businesses and the amount of trade that will result from this Federal land related activity is unknown but expected to be insignificant.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 regarding civil justice reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless their program meets certain requirements.

In accordance with the President's memorandum of April 29, 1994,

"Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

#### Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Carl Jack, and Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch and Bob Gerhard, Alaska Regional Office, National Park Service; Warren Eastland and Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

#### List of Subjects

##### 36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

##### 50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

■ For the reasons presented in the preamble, the Federal Subsistence Board amends Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

#### PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA [AMENDED]

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

#### § \_\_.4 [Amended]

■ 2. In Subpart A of 36 CFR part 242 and 50 CFR part 100, § \_\_.4, the definition of "Regulatory year" is removed.

■ 3. In Subpart B of 36 CFR part 242 and 50 CFR part 100, § \_\_.11(b)(1) is revised to read as follows:

#### § \_\_.11 Regional advisory councils.

(a) \* \* \*

(b) *Establishment of Regional Councils; membership.* (1) The Secretaries, based on Board recommendation, will establish the number of members for each Regional Council. To ensure that each Council represents a diversity of interests, the Board will strive to ensure that 70 percent of the members represent subsistence interests within a region and 30 percent of the members represent commercial and sport interests within a region. The portion of membership that represents the commercial and sport interests shall include, where possible, at least one representative from the sport community and one representative from the commercial community. A Regional Council member must be a resident of the region in which he or she is appointed and must be knowledgeable about the region and subsistence uses of the public lands therein. The Board will accept nominations and make recommendations to the Secretaries for membership on the Regional Councils. In making their recommendations, the Board will identify the interest(s) the applicants propose to represent on the respective Regional Councils. The Secretary of the Interior with the concurrence of the Secretary of Agriculture will make the appointments to the Regional Councils.

\* \* \* \* \*

■ 4. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § \_\_.25(a) is amended by adding the definition "Regulatory year" immediately before the definition "Ring net" to read as follows:

#### § \_\_.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.

(a) \* \* \*

*Regulatory year* means July 1 through June 30, except for fish and shellfish for which it means April 1 through March 31.

\* \* \* \* \*

Dated: September 20, 2004.

**Gale A Norton,**

*Secretary of the Interior, Department of the Interior.*

Dated: September 30, 2004.

**Dennis E. Bschor,**

*Regional Forester, USDA-Forest Service.*

[FR Doc. 04–22820 Filed 10–13–04; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[CA 307–0464a; FRL–7818–6]

#### Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from glass coating operations. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on December 13, 2004, without further notice, unless EPA receives adverse comments by November 15, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revision, EPA's technical support document (TSD), and other materials relevant to this action at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revision by appointment at the following locations:

Air and Radiation Docket and

Information Center, U.S.

Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 1001 "I" Street,  
Sacramento, CA 95814.

San Joaquin Valley APCD, 1990 E.  
Gettysburg, Fresno, CA 93726.

A copy of the rule may also be  
available via the Internet at [http://  
www.arb.ca.gov/drdb/drdbltxt.htm](http://www.arb.ca.gov/drdb/drdbltxt.htm).  
Please be advised that this is not an EPA  
website and may not contain the same  
version of the rule that was submitted  
to EPA.

**FOR FURTHER INFORMATION CONTACT:**  
Francisco Dóñez, EPA Region IX, (415)  
972-3956, [Donez.Francisco@epa.gov](mailto:Donez.Francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:**  
Throughout this document, "we," "us"  
and "our" refer to EPA.

#### Table of Contents

- I. The State's Submittal
  - A. What rule did the State submit?
  - B. Are there other versions of this rule?
  - C. What is the purpose of the submitted  
rule revisions?
- II. EPA's Evaluation and Action

- A. How is EPA evaluating the rule?
  - B. Does the rule meet the evaluation  
criteria?
  - C. EPA recommendations to further  
improve the rule
  - D. Public comment and final action
- III. Statutory and Executive Order Reviews

#### I. The State's Submittal

##### A. What Rule Did the State Submit?

Table 1 lists the rule we are approving  
with the dates that it was adopted by the  
local air agency and submitted by the  
California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule number	Rule title	Adopted	Submitted
SJVUAPCD .....	4610	Glass Coating Operations .....	04/17/03	06/03/04

On June 30, 2004, this rule submittal  
was found to meet the completeness  
criteria in 40 CFR Part 51 Appendix V,  
which must be met before formal EPA  
review.

##### B. Are There Other Versions of This Rule?

We approved a version of Rule 4610  
into the SIP on September 16, 2003 (see  
68 FR 54167). The SJVUAPCD adopted  
revisions to the SIP-approved version on  
April 17, 2003 and CARB submitted  
them to us on June 3, 2004.

##### C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level  
ozone and smog, which harm human  
health and the environment. Section  
110(a) of the CAA requires states to  
submit regulations that control VOC  
emissions. The submitted rule revisions  
delay by six months the implementation  
date for additional VOC emission  
reductions for mirror backing  
operations. This delay is to allow time  
for the single mirror coating operation  
in the district to implement a powder  
coating line to substitute for its previous  
high-VOC coating operation. Powder  
coat application reduces VOC emissions  
for the coating process from 63 tons per  
year to essentially zero. The TSD has  
more information about this rule.

#### II. EPA's Evaluation and Action

##### A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be  
enforceable (see section 110(a) of the  
Act), must require Reasonably Available  
Control Technology (RACT) for major  
sources in nonattainment areas (see  
section 182(b)(2)), and must not relax  
existing requirements (see sections  
110(l) and 193). The San Joaquin Valley  
Unified APCD regulates an ozone

nonattainment area (see 40 CFR part 81),  
so Rule 4610 must fulfill RACT.

Guidance and policy documents that  
we use to help evaluate specific  
enforceability and RACT requirements  
consistently include the following:

1. Portions of the proposed post-1987  
ozone and carbon monoxide policy that  
concern RACT, 52 FR 45044, November  
24, 1987.
2. "Issues Relating to VOC Regulation  
Cutpoints, Deficiencies, and  
Deviations," EPA, May 25, 1988 (the  
Bluebook).
3. "Guidance Document for Correcting  
Common VOC & Other Rule  
Deficiencies," EPA Region 9, August 21,  
2001 (the Little Bluebook).

##### B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with  
the relevant policy and guidance  
regarding enforceability, RACT, and SIP  
relaxations. The submitted rule makes a  
minor revision to the SIP-approved Rule  
4610, which EPA determined to fulfill  
RACT. See 68 FR 54167 (September 16,  
2003) and the associated TSD. The  
submitted rule's emission limits are  
consistent with other California air  
district rules regulating glass coating  
operations. The rule contains adequate  
record keeping and test methods  
provisions for monitoring the  
compliance of regulated facilities. The  
submitted rule grants a six month  
extension for the implementation of  
additional VOC emission reductions for  
mirror backing operations, but this short  
compliance delay does not interfere  
with RACT or with relevant attainment  
or reasonable further progress (RFP)  
requirements. The TSD has more  
information on our evaluation.

##### C. EPA Recommendations to Further Improve the Rules

EPA has no recommended changes for  
future revisions of Rule 4610.

##### D. Public Comment and Final Action

As authorized in section 110(k)(3) of  
the Act, EPA is fully approving the  
submitted rule because we believe it  
fulfills all relevant requirements. We do  
not think anyone will object to this  
approval, so we are finalizing it without  
proposing it in advance. However, in  
the Proposed Rules section of this  
**Federal Register**, we are simultaneously  
proposing approval of the same  
submitted rule. If we receive adverse  
comments by November 15, 2004, we  
will publish a timely withdrawal in the  
**Federal Register** to notify the public  
that the direct final approval will not  
take effect and we will address the  
comments in a subsequent final action  
based on the proposal. If we do not  
receive timely adverse comments, the  
direct final approval will be effective  
without further notice on December 13,  
2004. This will incorporate this rule  
into the federally enforceable SIP.

#### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR  
51735, October 4, 1993), this action is  
not a "significant regulatory action" and  
therefore is not subject to review by the  
Office of Management and Budget. For  
this reason, this action is also not  
subject to Executive Order 13211,  
"Actions Concerning Regulations That  
Significantly Affect Energy Supply,  
Distribution, or Use" (66 FR 28355, May  
22, 2001). This action merely approves  
state law as meeting Federal  
requirements and imposes no additional  
requirements beyond those imposed by  
state law. Accordingly, the

Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 13, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 10, 2004.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(331) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(331) New and amended regulations for the following APCDs were submitted on June 3, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4610 amended on April 17, 2003.

\* \* \* \* \*

[FR Doc. 04-22956 Filed 10-13-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7825-8]

### Florida: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Florida has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Florida's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This Final authorization will become effective on December 13, 2004, unless EPA receives adverse written comment by November 15, 2004. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Send written comments to Audrey E. Baker, Florida Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960; (404) 562-8483. You may also e-mail your comments to

Baker.Audrey@epa.gov or submit your comments at <http://www.regulations.gov>. We must receive your comments by November 15, 2004. You can view and copy Florida's application from 8 a.m. to 5 p.m. at The Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400 and from 8:30 a.m. to 3:45 p.m. EPA, Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960, Phone number (404) 562-8190, Patricia Strougal, Librarian.

**FOR FURTHER INFORMATION CONTACT:** Audrey E. Baker, Florida Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960; (404) 562-8483.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Why Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

##### **B. What Decisions Have We Made in This Rule?**

We conclude that Florida's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Florida Final authorization to operate its hazardous waste program with the changes described in the authorization application. Florida has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under

the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Florida, including issuing permits, until the State is granted authorization to do so.

##### **C. What Is the Effect of Today's Authorization Decision?**

The effect of this decision is that a facility in Florida subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Florida has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Florida is being authorized by today's action are already effective, and are not changed by today's action.

##### **D. Why Wasn't There a Proposed Rule Before Today's Rule?**

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

##### **E. What Happens if EPA Receives Comments That Oppose This Action?**

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

##### **F. What Has Florida Previously Been Authorized for?**

Florida initially received Final authorization on January 29, 1985, effective February 12, 1985 (50 FR 3908), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on December 1, 1987, effective March 3, 1988 (52 FR 45634), December 16, 1988, effective January 3, 1989 (53 FR 50529), December 14, 1990, effective February 12, 1991 (55 FR 51416), February 5, 1992, effective April 6, 1992 (57 FR 4371), February 7, 1992, effective April 7, 1992 (57 FR 4738), May 20, 1992, effective July 20, 1992 (57 FR 21351), November 9, 1993, effective January 10, 1994, (58 FR 59367), July 11, 1994, effective September 9, 1994 (59 FR 35266), August 16, 1994, effective October 17, 1994 (59 FR 41979), October 26, 1994, effective December 27, 1994 (59 FR 53753), April 1, 1997, effective June 2, 1997 (62 FR 15407), August 23, 2001, effective October 22, 2001 (66 FR 44307), August 20, 2002, effective October 21, 2002 (67 FR 53886 and 67 FR 53889). The authorized Florida program, through RCRA Cluster IV, was incorporated by reference into the CFR on January 20, 1998, effective March 23, 1998 (63 FR 2896). Florida received corrective action authority on September 18, 2000, effective November 18, 2000 (65 FR 56256).

##### **G. What Changes Are We Authorizing With Today's Action?**

Florida has submitted final complete program revision applications on seeking authorization of their changes in accordance with 40 CFR 271.21. Florida's revision consists of provisions promulgated July 1, 1997 through June 30, 1998 (RCRA Cluster VIII), July 1, 1998 through June 30, 1999 (RCRA IX), and July 1, 1999 through June 30, 2000, otherwise known as RCRA Cluster X. The rule adoption for RCRA Cluster VIII was effective on February 4, 2000. The rule adoption for RCRA Clusters IX and X was effective on December 20, 2000. Florida Statutes Chapter 403 allows the Florida Department of Environmental Protection to administer the rules

governing hazardous waste management in the state. We now make an immediate final decision, subject to receipt of written comments that oppose this

action, that Florida's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we grant

Florida Final authorization for the following program changes:

Description of federal requirement	Federal Register	Analogous state authority
Checklist 160, Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment.	July 14, 1997 62 FR 37694–37699	Rule 62–730.183, Florida Administrative Code (F.A.C.).
Checklist 161, Emergency Revision of the Carbamate Land Disposal Restrictions.	August 28, 1997 62 FR 45568–45573	Rule 62–730.183, F.A.C.
Checklist 163, Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, Clarification and Technical Amendment.	December 8, 1997 62 FR 64636–64671	Rules 62–730.180(1), 62–730.180(2), 62–730.220(3) F.A.C.
Checklist 164, Kraft Mill Steam Stripper Condensate Exclusion .....	April 15, 1998 63 FR 18504–18751	Rule 62–730.030(1), F.A.C.
Checklist 167A, Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes.	May 26, 1998 63 FR 28556–28753	Rule 62–730.183, F.A.C.
Checklist 167C, Land Disposal Restrictions Phase IV—Corrections .....	May 26, 1998 62 FR 28556–28753	Rule 62–730.183, F.A.C.
Checklist 167E, Bevill Exclusion Revisions and Clarifications .....	May 26, 1998 63 FR 28556–28753	Rule 62–730.030(1), F.A.C.
Checklist 168, Hazardous Waste Combustors; Revised Standards .....	June 19, 1998 63 FR 33782–33829	Rules 62–730.030(1) and 62–730–220(3), F.A.C.
Checklist 169, Petroleum Refining Process Wastes .....	August 6, 1998 63 FR 42110–42189	Rules 62–730.030(1), 62–730.181(1), and 62–730.183(1), F.A.C.
Checklist 170, Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers Amendments.	August 31, 1998 63 FR 46332–46334	Rule 62–730.183(1), F.A.C.
Checklist 171, Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production.	September 4, 1998 63 FR 47410–47418	Rule 62–730.183(1), F.A.C.
Checklist 172, Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags.	September 9, 1998 63 FR 48124–48127	Rule 62–730.183(1), F.A.C.
Checklist 173, Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule.	September 24, 1998 63 FR 51254–51267	Rule 62–730.183(1), F.A.C.
Checklist 174, Post-Closure Permit and Closure Process .....	October 22, 1998 63 FR 56710–56735	Rules 62–730.180(1), 62–730.180(2), 62–730.220(3) F.A.C.
Checklist 175, HWIR—Media .....	November 30, 1998 63 FR 65874–65947	Rules 62–730.020(1), 62–730.030(1), 62–730.180(1), 62–730.180(2), 62–730.183(1), 62–730.220(3), F.A.C.
Checklist 176, Universal Waste Rule—Technical Amendments .....	December 24, 1998 63 FR 71225–71230	Rules 62–730.181(1), 62–730.185(1), F.A.C.
Checklist 177, Organic Air Emission Standards: Clarification and Technical Amendments.	January 21, 1999 64 FR 3382	Rules 62–730.160(1), 62–730.180(1), 62–730.180(2), F.A.C.
Checklist 179, Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards.	May 11, 1999 64 FR 25408–25417	Rules 62–730.030(1), 62–730.160(1), 62–730.183(1), F.A.C.
Checklist 180, Test Procedures for the Analysis of Oil and Grease and Non-Polar Material.	May 14, 1999 64 FR 26315–26327	Rule 62–730.021(1)(a), F.A.C.
Checklist 183, Land Disposal Restrictions Phase IV—Technical Corrections.	October 20, 1999 64 FR 56469–56472	Rules 62–730.030(2), 62.730.160(1), 62–730.183(2), F.A.C.
Checklist 184, Accumulation Time for Waste Water Treatment Sludges ...	March 8, 2000 65 FR 12378–12398	Rule 62–730.160(1), F.A.C.
Checklist 185, Organobromine Production Wastes Vacatur .....	March 17, 2000 65 FR 14472–14475	Rules 62–730.030(2) 62–730.183(2), F.A.C.
Checklist 187, Petroleum Refining Process Wastes—Clarification .....	June 8, 2000 64 FR 36365–36367	Rules 62–730.030(2) 62–730.183(2), F.A.C.

#### H. Where Are the Revised State Rules Different From the Federal Rules?

Florida did not follow the April 9, 1999, vacatur issued by the U.S. Court of Appeals for the District of Columbia as it relates to the listing of organobromine production wastes at 40 CFR 268.40/Table “Treatment Standards for Hazardous Wastes” and 268.48(a)/Table Universal Treatment Standards (UTS). The State adopted the federal regulations as published in the May 26, 1998, rule in tables 40 CFR 268.40 and 268.48.

#### I. Who Handles Permits After the Authorization Takes Effect?

Florida will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to

implement and issue permits for HSWA requirements for which Florida is not yet authorized.

#### J. What Is Codification and Is EPA Codifying Florida's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart

L for this authorization of Florida's program changes until a later date.

#### K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective December 13, 2004.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 26, 2004.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 04-22590 Filed 10-13-04; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Chapter I and Part 52

[FAC 2001-25 Corrections]

#### Federal Acquisition Regulation; Corrections

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Corrections.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing corrections to the Introduction and Technical Amendments (Item V) documents in FAC 2001-25, published in the **Federal Register** at 69 FR 59698 and 59704, October 5, 2004.

**DATES:** Effective October 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laurie Duarte at (202) 501-4755, General Services Administration, FAR Secretariat, Washington, DC 20405.

#### Corrections

In the final and interim rule documents appearing in the issue of October 5, 2004:

■ 1. In the table on page 59698, third column, third entry, "2003-035" should read "2003-025".

#### 52.215-15 [Corrected]

■ 2. In 52.215-15:

■ A. Revise the date of the clause to read "(Oct 2004)"; and

■ B. In paragraph (b)(2) of the clause, remove "48 CFR 904.413-50(c)(12)(vi)" and add "48 CFR 9904.413-50(c)(12)(vi)" in its place.

Dated: October 7, 2004.

**Laurie Duarte,**

*FAR Secretariat.*

[FR Doc. 04-22964 Filed 10-13-04; 8:45 am]

**BILLING CODE 6820-EP-M**

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1852, 1853 and 1872

RIN 2700-AC88

#### Re-Issuance of NASA FAR Supplement Subchapters H and I

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final without change, the proposed rule published in the **Federal Register** on May 21, 2004. This final rule amends the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

**DATES:** Effective October 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1645; e-mail: [Celeste.M.Dalton@nasa.gov](mailto:Celeste.M.Dalton@nasa.gov).

**SUPPLEMENTARY INFORMATION:****A. Background**

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal

agency guidance of the type described in 1.301(a)(2)." FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (e.g., designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements)." Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This final rule modifies the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as Chapter 18 of Title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

NASA published a proposed rule in the **Federal Register** on May 21, 2004 (69 FR 29256). No comments were received in response to the proposed rule. Therefore, the proposed rule is being converted to a final rule without change.

**B. Regulatory Flexibility Act**

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because this final rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed

from the CFR will continue to be made available to the public via the Internet.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 1852, 1853, and 1872**

Government Procurement.

**Tom Luedtke,**

*Deputy Chief Acquisition Officer/Director for Procurement.*

■ Accordingly, 48 CFR Parts 1852, 1853, and 1872 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1852, 1853, and 1872 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 2. Amend part 1852 by—

■ A. Removing subpart 1852.1; and

■ B. In the introductory text of section 1852.223-74, removing "1823.570-3" and adding "1823.570-2" in its place.

**PART 1853—FORMS**

■ 3. Remove and reserve part 1853.

**PART 1872—ACQUISITIONS OF INVESTIGATIONS**

■ 4. Remove and reserve part 1872.

[FR Doc. 04-22967 Filed 10-13-04; 8:45 am]

BILLING CODE 7510-01-P

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA 2004-18813]

**Federal Motor Vehicle Safety Standards; Occupant Crash Protection**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** On September 26, 2003, NHTSA received a petition for rulemaking from Mr. Warren Howard requesting that the agency amend Federal Motor Vehicle Safety Standard

(FMVSS) No. 208, "Occupant crash protection," to allow for "the installation and standard feature" of his patented device. The patented device would prevent the radio sound system of a vehicle from operating unless the safety belts are fastened. Based on the analysis of available information, NHTSA is denying the petition for rulemaking.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues: Mr. John Lee, Office of Crashworthiness Standards, NVS-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2264. Fax: (202) 493-2290.

For legal issues: Mr. Chris Calamita, Office of Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

**SUPPLEMENTARY INFORMATION:** On September 26, 2003, Mr. Warren Howard submitted a petition for rulemaking requesting that NHTSA amend S7.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," to allow for "the installation and standard feature" of his patented device. The patented device would prevent the radio or sound system of a vehicle from emitting any sound or power unless the occupants of all designated seating positions have their seat belts fastened. According to the petitioner, the Audio System Seat Belt Safety Device would be installed in the seat and connected to the audio system of the vehicle. The system would sense when a person was seated and the audio system would not have power until the seat belt for that seated person was engaged. Once the seat belt was engaged, power would then be applied to the audio system. The petitioner further noted that this system could be installed on all seats within the same vehicle and not interfere with the audible and visual warning system required in FMVSS No. 208. The petitioner believed that such a device would encourage people to wear their safety belts and save thousands of lives each year, and billions of dollars in insurance costs.

NHTSA has denied petitions for rulemaking in the past that were very similar in nature to that of Mr. Howard's petition. On November 5, 1999 (64 FR 60625), the agency denied a petition for rulemaking submitted by Mr. Carl Nash and Mr. Donald Friedman. The petitioners requested an amendment to FMVSS No. 208 to "require effective belt use inducement." The petitioners stated that the inducements could

include, among other things, a disruption of electrical power to such "non-essential" accessories as the radio, tape or CD player, and air conditioning. The petitioners argued that a safety belt use inducement would have the potential to save a minimum of 7,000 additional lives per year. In denying the petition, the agency stated it considered whether the new requirements would (1) likely result in additional safety benefits, (2) be acceptable to the public, and (3) be within our statutory authority. NHTSA stated that none of the petitioners' recommended inducements met all of these criteria.

In response to the denial, Mr. Nash and Mr. Friedman resubmitted their petition request to the agency. The agency denied the second request in the preamble to the Advanced Air Bag Final Rule, published May 12, 2000 (65 FR 30680, 30733). The agency stated its belief that we do not have the statutory authority to require such devices; however we also stated that we would continue to monitor the level of public acceptance and effectiveness of systems that manufacturers are placing in their vehicles to encourage safety belt use. We stated that if it appeared that these systems were working, it might be appropriate to seek to have the 1974 amendment to the Motor Vehicle Safety Act, that prohibits NHTSA from requiring interlocks, either changed or repealed.

In the House Report, 107-108, to the Department of Transportation and Related Agencies Appropriations Act 2002 (Pub. L. 107-87), Congress directed a study to examine the potential benefits of technologies to increase safety belt use, determine how drivers view the acceptability of the technologies, and consider whether legislative or regulatory actions were necessary to enable their installation on passenger vehicles.<sup>1</sup> In response to this directive, NHTSA contracted with the Transportation Research Board of the National Academy of Sciences (NAS) to complete this study. Their report was published on October 14, 2003.<sup>2</sup>

Among their conclusions, the NAS report found that "entertainment interlocks" (e.g., devices that render the sound system inoperable until the driver buckles up) are "perceived to be effective," but fewer than half of the respondents found them "acceptable." The report also noted that some people might not experience an entertainment

interlock (i.e., older people who do not use the radio, drivers on short trips, etc.), and it also noted that such interlocks could be circumvented (e.g., by installing an aftermarket stereo). The NAS study found that other less-intrusive technologies, such as non-interlock systems, present greater opportunities for increasing safety belt use without the negative public reaction of interlocks. For entertainment interlock systems, such as that provided by Mr. Howard, the NAS report concluded that they would be most effective for younger drivers and not very effective at increasing belt use among hard-core nonusers and other high-risk groups. NHTSA generally concurs with this assessment.

We note that a device that would disable a vehicle's radio or sound system if occupants are not belted is currently allowed to be installed in motor vehicles in addition to, but not in place of, the warning system required by S7.3 of FMVSS No. 208. Motor vehicle manufacturers may offer the device as optional or standard equipment at their discretion. In an April 11, 2003 letter to Mr. Howard, the agency stated that such a device may be offered either as an original equipment option or an aftermarket item, but it must be configured such that it can be differentiated from the warning system required by S7.3. A copy of this letter was included in Mr. Howard's petition. (See docket for this notice).

The agency has denied similar petitions for rulemaking on entertainment interlocks within the past five years. With regard to Mr. Howard's device, the agency has provided the petitioner with a legal interpretation letter that stated that the voluntary installation of his specific patented device discussed in this petition is permitted. Given the agency's lack of authority to mandate interlock systems as a means of compliance with FMVSS No. 208 and the conclusions of the NAS report regarding public acceptability and effectiveness of these systems, the agency concludes that there is no basis for further rulemaking action on this issue nor any basis for considering seeking authority to require these interlock systems. This completes the agency's review of the petition for rulemaking. Accordingly, the petition for rulemaking is denied.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30162; delegation of authority at 49 CFR 1.50.

<sup>1</sup> House of Representatives Report 107-108 Department of Transportation and Related Agencies Appropriation Bill, 2002, June 22, 2001.

<sup>2</sup> "Buckling Up, Technologies to Increase Seat Belt Use," Special Report 278, Committee for the Safety Belt Technology Study, [www.TRB.org](http://www.TRB.org).

Issued on: October 6, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04-23079 Filed 10-13-04; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 031126297-3297-01; I.D. 100704A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the 2004 total allowable catch (TAC) of pollock specified for Statistical Area 610.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 10, 2004, through 1200 hrs, A.l.t., October 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on October 6, 2004 (filed for public inspection with the Office of the Federal Register on October 6, 2004, and is scheduled for publication in the **Federal Register** on October 12, 2004).

NMFS has determined that approximately 1,100 mt of pollock remain in the 2004 directed fishing allowance. This amount is large enough to provide for a manageable directed pollock fishery in Statistical Area 610. Therefore, in accordance with 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the 2004 TAC of pollock specified for Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the

GOA effective 1200 hrs, A.l.t., October 11, 2004.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 610.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 7, 2004.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04-23057 Filed 10-8-04; 1:42 pm]

BILLING CODE 3510-22-S

# Proposed Rules

Federal Register

Vol. 69, No. 198

Thursday, October 14, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2004-19089; Directorate Identifier 2000-CE-38-AD]

RIN 2120-AA64

#### Airworthiness Directives; Raytheon Aircraft Company 90, 99, 100, 200, and 300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 98-15-13, which applies to certain Raytheon Aircraft Company 90, 100, 200, and 300 series airplanes. This proposed superseding adds the Raytheon Beech 99 series to the applicability listed in AD 98-15-13. No change in the compliance action is proposed for those aircraft originally affected by AD 98-15-13. AD 98-15-13 currently requires you to check the airplane maintenance records from January 1, 1994, up to and including the effective date of that AD, for any MIL-H-6000B fuel hose replacements on the affected airplanes; inspecting any replaced rubber fuel hose for a spiral or diagonal external wrap with a red or orange-red stripe along the length of the hose with 94519 printed along the stripe; and replacing any MIL-H-6000B rubber fuel hose matching this description with an FAA-approved hose having a criss-cross or braided external wrap. We are issuing this proposed AD to prevent fuel flow interruption, which could lead to uncommanded loss of engine power and loss of control of the airplane.

**DATES:** We must receive any comments on this proposed AD by November 18, 2004.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:*

Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *Fax:* 1-202-493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 625-7043.

To view the comments to this proposed AD, go to <http://dms.dot.gov>. This is docket number FAA-2004-19089.

#### FOR FURTHER INFORMATION CONTACT:

Jeffrey A. Pretz, Aerospace Engineer, ACE-116W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4153; facsimile: (316) 946-4407.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, "FAA-2004-19089; Directorate Identifier 2000-CE-38-AD" at the beginning of your comments. We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA-2004-19089. You may review the DOT's complete Privacy

Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

#### Docket Information

*Where can I go to view the docket information?* You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at <http://dms.dot.gov>. The comments will be available in the AD docket shortly after the DMS receives them.

#### Discussion

*Has FAA taken any action to this point?* Blockage of fuel hoses due to hose delamination on certain Raytheon Aircraft Company 90, 100, 200, and 300 series airplanes caused us to issue AD 98-15-13, Amendment 39-10664 (63 FR 38295-98, July 16, 1998). AD 98-15-13 currently requires the following on the affected airplanes:

- Checking the airplane maintenance records from January 1, 1994, up to and including the effective date of the AD, for any MIL-H-6000B fuel hose replacements on the affected airplanes;
- Inspecting any replaced rubber fuel hose for a spiral or diagonal external wrap with a red or orange-red stripe along the length of the hose with 94519 printed along the stripe; and
- Replacing any MIL-H-6000B rubber fuel hose matching this description

with an FAA-approved hose having a criss-cross or braided external wrap

*What has happened since AD 98–15–13 to initiate this proposed action?* The FAA has evaluated the design of the Raytheon Beech 99 series airplanes and determined that they could incorporate the same fuel hoses. Therefore, we have determined that the 99 series airplanes should be added to the applicability of these actions.

*What is the potential impact if FAA took no action?* Fuel flow interruption could lead to uncommanded loss of engine power and loss of control of the airplane.

*Is there service information that applies to this subject?* Raytheon has issued Service Bulletin SB 2718, Rev. 1, dated June 1997, and Service Bulletin SB 2718, Rev. 2, dated April 2000.

*What are the provisions of this service information?* The service bulletin includes procedures for:

- Replacing all MIL–H–6000B rubber fuel hoses on the affected airplanes that were manufactured from January 1, 1994;
- Inspecting the affected airplanes that were manufactured prior to January 1,

- 1994, for any MIL–H–6000B rubber fuel hoses that have been replaced;
- Removing the MIL–H–6000B replacement hoses that have a spiral or diagonal exterior wrap and a red or red-orange stripe with the manufacturer code, 94519; and
- Replacing the hose with a hose that has a criss-cross or braided type of external wrap for all affected airplanes.

**FAA’s Determination and Requirements of This Proposed AD**

*What has FAA decided?* We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing AD action.

*What would this proposed AD require?* This proposed AD would supersede AD 98–15–13 with a new AD that would incorporate the actions in the previously-referenced service bulletin. The actions and compliance of AD 98–15–13 would remain the same, and the Raytheon Beech 99 Series airplanes would be added to the applicability.

*How does the revision to 14 CFR part 39 affect this proposed AD?* On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA’s AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Costs of Compliance**

*How many airplanes would this proposed AD impact?* We estimate that this proposed AD affects 5,107 airplanes in the U.S. registry. AD 98–15–13 affected an estimated 4,868 airplanes; this proposed AD will add an estimated 239 airplanes to the number of affected airplanes.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed inspection:

Labor cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × \$65 = \$65 .....	\$65	\$331,955

*What is the difference between the cost impact of this proposed AD and the cost impact of AD 98–15–13? We estimate the following costs to accomplish this proposed inspection for the Raytheon Beech 99 Series airplanes:*

Labor cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × \$65 = \$65 .....	\$65	\$15,535

Raytheon Aircraft Company will provide warranty credit for parts and replacement as specified in the service information.

**Regulatory Findings**

*Would this proposed AD impact various entities?* We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Would this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed AD:

1. Is not a “significant regulatory action” under Executive Order 12866;

2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include “AD Docket No. FAA–2004–19089” in your request.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–15–13, Amendment 39–10664 (63 FR 38295–98, July 16, 1998), and by adding a new AD to read as follows:

**Raytheon Aircraft Company:** Docket No. FAA–2004–19089; Directorate Identifier 2000–CE–38–AD

**When Is the Last Date I Can Submit Comments on This Proposed AD?**

(a) We must receive comments on this proposed airworthiness directive (AD) by November 18, 2004.

**What Other ADs Are Affected by This Action?**

(b) This AD supersedes AD 98–15–13, Amendment 39–10664.

**What Airplanes Are Affected by This AD?**

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Series
(1) 65–90 .....	LJ–1 through LJ–75, and LJ–77 through LJ–113.
(2) 65–A90 .....	LJ–76, LJ–114 through LJ–317, and LJ–178A.
(3) B90 .....	LJ–318 through LJ–501.
(4) C90 .....	LJ–502 through LJ–1062.
(5) C90A .....	LJ–1063 through LJ–1287, LJ–1289 through LJ–1294, and LJ–1296 through LJ–1299.
(6) C90B .....	LJ–1288, LJ–1295, and LJ–1300 through LJ–1445.
(7) E90 .....	LW–1 through LW–347.
(8) F90 .....	LA–2 through LA–236.
(9) H90 .....	LL–1 through LL–61.
(10) 100 .....	B–2 through B–89, and B–93.
(11) A100 .....	B–1, B–90 through B–92, B–94 through B–204, and B–206 through B–247.
(12) A100–1 (RU–21J) .....	BB–3 through BB–5.
(13) B100 .....	BE–1 through BE–137.
(14) 200 .....	BB–2, BB–6 through BB–185, BB–187 through BB–202, BB–204 through BB–269, BB–271 through BB–407, BB–409 through BB–468, BB–470 through BB–488, BB–490 through BB–509, BB–511 through BB–529, BB–531 through BB–550, BB–552 through BB–562, BB–564 through BB–572, BB–574 through BB–590, BB–592 through BB–608, BB–610 through BB–626, BB–628 through BB–646, BB–648 through BB–664, BB–735 through BB–792, BB–794 through BB–797, BB–799 through BB–822, BB–824 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912.
(15) 200C .....	BL–1 through BL–23, and BL–25 through BL–36.
(16) 200CT .....	BN–1.
(17) 200T .....	BT–1 through BT–BT–22, and BT–28.
(18) A200 .....	BC–1 through BC–75, and BD–1 through BD–30.
(19) A200C .....	BJ–1 through BJ–66.
(20) A200CT .....	BP–1, BP–7 through BP–11, BP–22, BP–24 through BP–63, FC–1 through FC–3, FE–1 through FE–36, and GR–1 through GR–19.
(21) B200 .....	BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, BB–913 through BB–990, BB–992 through BB–1051, BB–1053 through BB–1092, BB–1094, BB–1095, BB–1099 through BB–1104, BB–1106 through BB–1116, BB–1118 through BB–1184, BB–1186 through BB–1263, BB–1265 through BB–1288, BB–1290 through BB–1300, BB–1302 through BB–1425, BB–1427 through BB–1447, BB–1449, BB–1450, BB–1452, BB–1453, BB–1455, BB–1456, and BB–1458 through BB–1536.
(22) B200C .....	BL–37 through BL–57, BL–61 through BL–140, BU–1 through BU–10, BV–1 through BV–12, and BW–1 through BW–21.
(23) B200CT .....	BN–2 through BN–4, BU–11, BU–12, FG–1, and FG–2.
(24) B200T .....	BT–23 through BT–27, and BT–29 through BT–38.
(25) 300 .....	FA–1 through BA–230, and FF–1 through FF–19.
(26) B300 .....	FL–1 through FL–141.
(27) B300C .....	FM–1 through FM–9, and FN–1.
(28) 99, 99A, A99, A99A .....	U–1 through U–49, U–51 through U–145, and U–147.
(29) B99 .....	U–146, and U–148 through U–164.
(30) C99 .....	U–50, and U–165 through U–239.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of blockage of fuel hose due to hose delamination. The actions

specified in this AD are intended to prevent fuel flow interruption, which could lead to uncommanded loss of engine power and loss of control of the airplane.

**What Must I do to Address This Problem?**

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) For airplanes manufactured prior to January 1, 1994, check airplane maintenance records for any MIL–H–6000B fuel hose replacement from January 1, 1994, up to and including the effective date of this AD.	For all affected airplanes other than Models 99, 99A, A99, A99A, B99, and C99: Within 200 hours time-in-service (TIS) after August 28, 1998 (the effective date of AD 98–15–13). For all affected Models 99, 99A, A99, A99A, B99, and C99 airplanes: Within the next 200 hours TIS after the effective date of this AD.	Documented compliance with AD 98–15–13 or follow PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000. An owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations 914 CFR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.7 of the Federal Aviation Regulations (14 CFR 43.9) can accomplish paragraph (e)(1) required by this AD.

Actions	Compliance	Procedures
(2) If the airplane records show that an MIL-H-6000B fuel hose has been replaced, inspect the airplane fuel hoses for a 3.8-inch-wide red or orange-red, length-wise stripe, with manufacturer's code, 94519, printed periodically along the line in red letters on one side. The hoses have a spiral or diagonal outer wrap with a fabric-type texture on the rubber surface.	For all affected airplanes other than the Models 99, 99A, A99, A99A, B99, and C99: Within 200 hours time-in-service (TIS) after August 28, 1998 (the effective date of AD 98-15-13). For all affected Models 99, 99A, A99, A99A, B99, and C99 airplanes: Within the next 200 hours TIS after the effective date of this AD.	Documented compliance with AD 98-15-13 or follow PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000.
(3) Replace any fuel hose that matches the description in paragraph (e)(2) of this AD with an FAA-approved MIL-H-6000B fuel hose that has a criss-cross or braided external wrap.	For all affected airplanes other than the Models 99, 99A, A99, A99A, B99, and C99: Within 200 hours time-in-service (TIS) after August 28, 1998 (the effective date of AD 98-15-13). For all affected Models 99, 99A, A99, A99A, B99, and C99 airplanes: Within the next 200 hours TIS after the effective date of this AD.	Documented compliance with AD 98-15-13 or follow PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000.
(4) For Raytheon Models C90A, B200, and B300 airplanes that were manufactured on January 1, 1994, and after, replace the MIL-H-6000B fuel hoses.	Within 200 hours time-in-service (TIS) after August 28, 1998 (the effective date of AD 98-15-13).	Documented compliance with AD 98-15-13 or follow PART I of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000.
(5) No one shall install a rubber fuel hose having spiral or diagonal external wrap with a 3/8-inch-wide red or orange-red, length-wise stripe running down the side of the hose, with the manufacturer's code, 94519, printed periodically along the line in red letters on any of the affected airplanes.	As of the effective date of this AD .....	Not applicable.

#### May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Jeffrey A. Pretz, Aerospace Engineer, ACE-116W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4153; facsimile: (316) 946-4407.

#### May I Get Copies of the Documents Referenced in This AD?

(g) To get copies of the documents referenced in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 625-7043. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2004-19089.

Issued in Kansas City, Missouri, on October 5, 2004.

**Dorenda D. Baker,**

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04-23028 Filed 10-13-04; 8:45 am]

BILLING CODE 4910-13-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[CA 307-0464b; FRL-7818-7]

#### Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from glass coating operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by November 15, 2004.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revision, EPA's technical support document (TSD), and other materials relevant to this action at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 1001 "I" Street,  
Sacramento, CA 95814.

San Joaquin Valley APCD, 1990 E.  
Gettysburg, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

#### FOR FURTHER INFORMATION CONTACT:

Francisco Dóñez, EPA Region IX, (415) 972-3956, [Donez.Francisco@epa.gov](mailto:Donez.Francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rule: SJVUAPCD 4610. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the

comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 10, 2004.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 04-22957 Filed 10-13-04; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 271**

**[FRL-7825-7]**

#### **Florida: Final Authorization of State Hazardous Waste Management Program Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Florida has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final

authorization to Florida. In the “Rules and Regulations” section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by November 15, 2004.

**ADDRESSES:** Send written comments to Audrey E. Baker, Florida Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960; (404) 562-8483. You may

also e-mail your comments to [Baker.Audrey@epa.gov](mailto:Baker.Audrey@epa.gov) or submit your comments at <http://www.regulations.gov>. You can examine copies of the materials submitted by Florida during normal business hours at the following locations: EPA, Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960, Phone number: (404) 562-8190, Patricia Strougal, Librarian; or The Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

#### **FOR FURTHER INFORMATION CONTACT:**

Audrey E. Baker, Florida Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960; (404) 562-8483.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the “Rules and Regulations” section of this **Federal Register**.

Dated: March 26, 2004.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 04-22591 Filed 10-13-04; 8:45 am]

**BILLING CODE 6560-50-P**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Tongass National Forest, Admiralty National Monument, Juneau, Alaska; Notice of Intent To Prepare an Environmental Impact State To Address the Environmental Effects and Necessary Mitigation Measures for the Construction, Maintenance, and Operation of the Angoon Hydroelectric Project on Admiralty Island, in Southeast Alaska**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the USDA Forest Service, Tongass National Forest, will prepare an environmental impact statement (EIS) to address the environmental effects and necessary mitigation measures for the construction, maintenance, and operation of the Angoon Hydroelectric Project on Admiralty Island, in Southeast Alaska.

The City of Angoon is the only permanent community on Admiralty Island; it is approximately 60 air miles southwest of Juneau, Alaska. The project area includes the lower 8,500 feet of Thayer Creek and the area between Thayer Creek and the City of Angoon, located approximately 6 miles to the south. In addition, the project area includes an underwater crossing of Kootznoowoo Inlet for a transmission line. All project facilities, except for the underwater transmission line crossing Kootznoowoo Inlet and the terminus in Angoon, would be located on National Forest System lands. The project area includes portions of Cooper River Meridian. T.49S, R67E, and T.50S, R67E.

**DATES:** Comments will be accepted throughout the EIS process; to be most useful during the analysis, however,

comments should be received in writing on or before December 3, 2004. The draft environmental impact statement is expected in May 2005, and the final environmental impact statement is expected in August 2005.

**ADDRESSES:** Send written comments to Susan Marthaller, District Ranger, Admiralty National Monument, 8461 Old Dairy Road, Juneau, Alaska, 99801 or email to [smarthaller@fs.fed.us](mailto:smarthaller@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** Susan Marthaller, District Ranger, Admiralty National Monument, 8461 Old Dairy Road, Juneau, Alaska, 99801; phone 907-790-7472; fax 907-586-8795 or email to [smarthaller@fs.fed.us](mailto:smarthaller@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The City of Angoon has some of the highest electric rates in Alaska. The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) section 506(a)(3)(B) granted Kootznoowoo, Inc., the village corporation of Angoon, "the right to develop hydroelectric resources on Admiralty Island within township 49 south, range 67 east, and township 50 south, range 67 east, Cooper River Base and Meridian, subject to such conditions as the Secretary of Agriculture shall prescribe for the protection of water, fishery, wildlife, recreational, and scenic values of Admiralty Island." ANILCA also recognized the economic and cultural needs and expectations associated with Kootznoowoo, Inc., (ANILCA Sec. 506(a)(3)(B)).

Consultants for Kootznoowoo, Inc. completed the Angoon Hydroelectric Project Feasibility Evaluation Report in march 2000 (HDR Alaska 2000). The proposed operations are subject to approval of a Plan of Operations under 36 CFR, part 228, which is intended to ensure that adverse environmental effects on National Forest System lands and resources are minimized.

#### **Purpose and Need for Action**

The purpose and need for the Angoon Hydroelectric Project EIS is to determine how to develop the project while protecting the resources of Admiralty Island National Monument. ANILCA granted Kootznoowoo, INC the right to develop the hydroelectric project subject to mitigations prescribed by the Forest Service for protection of water, fishery, wildlife, recreational and scenic values of Admiralty Island.

Kootznoowoo, Inc., sent a letter to the Regional Forester on November 19, 2003, requesting that the Forest Service begin the NEPA work for the Angoon Hydroelectric Project. More recently, on April 21, 2004, Kootznoowoo, Inc., submitted an application asking for Forest Service authorization for the project.

Kootznoowoo, Inc., the City of Angoon, and the Angoon Community Association are pursuing funding to develop this hydroelectric project with the expectation that it would reduce the cost of power generation in Angoon and result in lower electric rates for Angoon residents. The project is expected to benefit the local economy by creating construction jobs and providing sufficient power for future growth of the community.

#### **Proposed Action**

The Forest Service Proposed Action is to authorize, through special use permits and easements, the construction and operation of a run-of-river hydroelectric facility on Thayer Creek. "Run-of-river" refers to operations in which the hydroelectric power facility uses only the water that is available in the natural flow of the river. Under normal conditions, run-of-river facilities involve little or not water storage, and power generation fluctuates with the stream flow. Major improvements associated with the 1,000-kilowatt hydroelectric power facility include the following:

1. Port facilities located 1.8 miles south of the outlet of Thayer Creek consisting of mooring buoys and a garage for operation and maintenance vehicles.
2. A diversion dam, approximately 10 feet high, on Thayer Creek, about 1.6 miles up from the outlet.
3. An intake structure at the diversion dam.
4. A pipeline, approximately 1.2 miles long, from the intake structure to the powerhouse.
5. A penstock, about 510 feet long, from the pipeline to the powerhouse.
6. A surge tank near the junction of the pipeline and penstock.
7. A power plant structure, about 30 feet by 68 feet and 25 feet high, to house two generating units.
8. Three access roads including a 1.9-mile road from the port facilities to the power plant, a 1.4-mile road from near the powerhouse to the diversion dam/

intake structure, and an estimated 4.2-mile road from the port facilities to Kootznoowoo Inlet.

9. A transmission line consisting of two overhead segments, 1.9 miles and 4.2 miles, and one submarine crossing, approximately 0.9 mile. The three segments would extend from the powerhouse to the port facilities, from the port facilities to Kootznoowoo Inlet, and last, from the northern shore of Kootznoowoo Inlet to the City of Angoon, on the opposite shore.

In addition, various temporary facilities, including a barge landing, staging areas, and a construction camp, would be needed during project construction. The Feasibility Evaluation Report describes existing Angoon electrical loads and resources and includes the development schedule and an economic analysis.

The facilities, roads, and transmission lines would be designed to meet Forest Plan standards and guidelines with an emphasis on:

1. Scenic visibility standards
2. Minimum impact to beach fringe and wetlands

A plan, subject to approval by the Forest Service and agencies with permitting jurisdiction, would be required before implementation to set performance criteria for achieving objectives related to beach fringe and estuary, scenery, and heritage resources.

#### Possible Alternatives

In addition to the Proposed Action and No Action, alternatives currently under consideration for analysis in the EIS include: subterranean/submarine transmission line between Thayer Creek and Angoon.

#### Responsible Official

Forrest Cole, Forest Supervisor, Tongass National Forest, 648 Mission Street, Federal Building, Ketchikan, AK 99901-6591.

#### Nature of Decision To Be Made

The decision to be made by the Forest Supervisor of the Tongass National Forest is under what terms and conditions to authorize, through special use permits and easements, the construction and operation of a hydroelectric facility on Thayer Creek as described above. The Forest Supervisor will also decide what mitigations, if any, would be necessary to implement the action.

#### Scoping Process

Public scoping meetings are planned in Angoon at the Community Services Building from 6 p.m. until 9 p.m. on Thursday, October 14, 2004, and in

Juneau at Centennial Hall from 7 p.m. until 9 p.m. on Friday, October 15, 2004.

#### Preliminary Issues

Potentially significant issues identified to date include potential effects on the following: (1) Consistency with wilderness management objectives, (2) visual resources.

#### Permits or Licenses Required

In an order issued January 23, 2001, the Federal Energy Regulatory Commission (FERC) found that a license would not be required for this project. FERC concluded that the Commission lacks jurisdiction to issue a license for the proposed project due to its location in a National Monument within the National Forest System. Because of this, the Forest Service is the lead agency for this project, and a Forest Service special use permit would be the primary agency authorization for the project. Permits from other federal and state agencies would also be required for specific portions of the project. Additional permits or licenses may include the following:

1. U.S. Army Corps of Engineers
  - Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
  - Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
  - National Pollutant Discharge Elimination System (402) Permit;
  - Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
  - Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
  - Solid Waste Disposal Permit;
  - Certification of Compliance with Alaska Water Quality Standards (401 Certification)

#### Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

#### Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement (Management Bulletin

number R10-MB-528) will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 4, 2004.

**Forest Cole,**

*Forest Supervisor.*

[FR Doc. 04-22969 Filed 10-12-04; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of Public Meeting, Davy Crockett National Forest Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. No. 106-393) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of Agriculture, Forest Service, Davy Crockett National Forest Resource Advisory Committee (RAC) meeting will meet on November 4, 2004.

**DATES:** The Davy Crockett National Forest RAC meeting will be held on November 4, 2004.

**ADDRESSES:** The Davy Crockett National Forest RAC meeting will be held at the Davy Crockett Ranger Station located on State Highway 7, approximately one-quarter mile west of FM 227 in Houston County, Texas. The meeting will begin at 6 p.m. and adjourn at approximately 9 p.m. A public comment period will be at 8:45 p.m.

**FOR FURTHER INFORMATION CONTACT:** Raoul Gagne, District Ranger, Davy Crockett National Forest, Rt. 1, Box 55 FS, Kennard, Texas 75847; Telephone: 936-655-2299 or e-mail at: [rgagne@fs.fed.us](mailto:rgagne@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The Davy Crockett National Forest RAC proposes projects and funding to the Secretary of Agriculture under section 203 of the Secure Rural Schools and Community Self Determination Act of 2000. The purpose of the November 4, 2004 meeting is to review and approve project proposals to submit to the Forest Supervisor for National Forests and Grasslands in Texas. These meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: October 7, 2004.

**Raoul W. Gagne,**

*Designated Federal Officer, Davy Crockett National Forest RAC.*

[FR Doc. 04-23019 Filed 10-13-04; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of Lincoln County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on Wednesday November 3, at 6 p.m. at the Supervisors Office in Libby, Montana for a business meeting. The meeting is open to the public.

**DATES:** November 3, 2004.

**ADDRESSES:** Kootenai National Forest, Supervisor's Office, 1101 U.S. Hwy 2 West, Libby, Montana.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293-6211, or e-mail [bedgmon@fs.fed.us](mailto:bedgmon@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Agenda topics include status of approved projects, prepare for the re-application process, and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: October 6, 2004.

**Bob Castaneda,**

*Forest Supervisor.*

[FR Doc. 04-23020 Filed 10-13-04; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Southwest Washington Provincial Advisory Committee Meeting Notice

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Washington Provincial Advisory Committee will meet on Wednesday, October 27, 2004, at the Ward Road Fire Hall #88 in Orchards/Vancouver, WA, 6701 NE

147th Ave., Vancouver, WA 98682. The meeting will begin at 9 a.m. and continue until 3 p.m.

The purpose of the meeting is to share information on the following programs: An update on current activity at Mount St. Helens; a Washington State Department Ecology assessment of Gifford Pinchot National Forest stream temperatures; the Western Washington Sustainable Harvest Environmental Impact Statement for State lands; an update on the Forest Service Region 6 invasive species Environmental Impact Statement, and to share information among members.

All Southwest Washington Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" is scheduled to occur at 1 p.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

**FOR FURTHER INFORMATION CONTACT:**

Direct questions regarding this meeting to Tom Knappenbeger, Public Affairs Officer, at (360) 891-5005, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: October 6, 2004.

**Claire Lavendel,**

*Forest Supervisor.*

[FR Doc. 04-23021 Filed 10-13-04; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF COMMERCE

#### Submission for OMB Review; Comment Request

DOC has submitted to the Office for Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104-13.

**Bureau:** International Trade Administration.

**Title:** SABIT: Applications and Questionnaires.

**Agency Form Number:** ITA-4143P-5.

**OMB Number:** 0625-0225.

**Type of Request:** Regular Submission.

**Burden:** 5988 hours.

**Number of Respondents:** 2370.

**Avg. Hours Per Response:** 4 hour per participant.

**Needs and Uses:** The Department of Commerce, International Trade Administration, SABIT Office supports technical assistance and training for professionals from Eurasia, while promoting information exchange and

U.S.-Eurasian partnerships. Since inception SABIT has trained over 3300 professionals from Eurasia.

The Applications and Questionnaires are utilized by SABIT staff to evaluate and select the most qualified intern candidates and host companies to participate in the Grant and Group programs. In addition, staff is able to implement changes and measure the effectiveness of the program by the responses collected.

**Affected Public:** Businesses or other non-profit, individuals (non-U.S. citizens, SABIT staff).

**Frequency:** Periodic.

**Respondent's Obligation:** Required. In order to participate in the SABIT Programs, applications need to be completed.

**OMB Desk Officer:** David Rostker, (202) 395-7340.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW, Washington, DC 20230; E-mail: [dHynek@doc.gov](mailto:dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be e-mailed to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax (202) 395-7285 within 30 days of the publication of this notice in the **Federal Register**.

Dated: October 7, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04-23007 Filed 10-13-04; 8:45 am]

**BILLING CODE 3510-HE-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration; Foreign Trade Zone Application

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 13, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental

Paperwork, Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

#### FOR FURTHER INFORMATION CONTACT:

Request for additional information or copies of the information collection instrument and instructions should be directed to: Foreign-Trade Zones Staff, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230; Phone Number: (202) 482-2862, and fax number (202) 482-0002.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Foreign Trade Zones Application is the vehicle by which individual firms or organizations apply for foreign-trade zone (FTZ) status, for subzone status, for manufacturing authority (including temporary/interim authority), or for expansion of an existing zone. The FTZ Act and Regulations require that an application with a description of the proposed project be made to the FTZ Board (19 U.S.C. 81b and 81f; 15 CFR 400.24-26) before a license can be issued or a zone can be expanded. The Act and Regulations require that applications contain detailed information on facilities, financing, operational plans, proposed manufacturing operations, need, and economic impact. Manufacturing activity in zones, which is primarily conducted in subzones, can involve issues related to domestic industry and trade policy impact. Such applications must include specific information on the Customs-tariff related savings that result from zone procedures and the economic consequences of permitting such savings. The FTZ Board needs complete and accurate information on the proposed operation and its economic effects because the Act and Regulations authorize the Board to restrict or prohibit operations that are detrimental to the public interest.

##### II. Method of Collection

U.S. firms or organizations submit applications to the Foreign-Trade Zones Board.

##### III. Data

**OMB Number:** 0625-0139.

**Form Number:** N/A.

**Type of Review:** Regular Submission.

**Affected Public:** Business or other for-profit.

**Estimated Number of Respondents:** 145.

**Estimated Time Per Response:** 20 to 120 hours (depending on type of application).

**Estimated Total Annual Burden Hours:** 9,180.

**Estimated Total Annual Costs:** The estimated annual cost for this collection is \$1,335,765.00 (\$371,970.00 for applicants and \$963,975.00 for the federal government).

#### IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 7, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04-23008 Filed 10-13-04; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration; Annual Report From Foreign-Trade Zones

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 13, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork, Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Request for additional information or copies of the information collection instrument and instructions should be directed to: Foreign-Trade Zones Staff, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230; Phone Number: (202) 482-2862, and fax number (202) 482-0002.

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The Foreign-Trade Zone Annual Report is the vehicle by which Foreign Trade Zone (FTZ) grantees report annually to the Foreign Trade Zones Board, pursuant to the requirements of the Foreign Trade Zones Act (19 U.S.C. 81a-81u). The annual reports submitted by grantees are the only complete source of compiled information on FTZ's. The data and information contained in the reports relates to international trade activity in FTZ's. The reports are used by the Congress and the Department to determine the economic effect of the FTZ program. The reports are also used by the FTZ Board and other trade policy officials to determine whether zone activity is consistent with U.S. international trade policy, and whether it is in the public interest. The public uses the information regarding activities carried on in FTZ's to evaluate their effect on industry sectors. The information contained in annual reports also helps zone grantees in their marketing efforts.

**II. Method of Collection**

FTZ grantees submit annual reports to the Foreign-Trade Zones Board.

**III. Data**

OMB Number: 0625-0109.

Form Number: ITA-359P.

Type of Review: Regular Submission.

Affected Public: State, local, or tribal governments or not-for-profit institutions which are FTZ grantees.

Estimated Number of Respondents: 160.

Estimated Time Per Response: 38 to 211 hours (depending on the size and structure of the FTZ).

Estimated Total Annual Burden Hours: 14,330.

Estimated Total Annual Costs: The estimated annual cost for this collection is \$695,990.00 (\$607,350.00 for submitters and \$88,640.00 for the federal government).

**IV. Request for Comments**

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 7, 2004.

**Madeleine Clayton,**

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04-23009 Filed 10-13-04; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-891]

**Notice of Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 14, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Daniel J. Alexy, Stephen Cho, or Audrey Twyman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1540, (202) 482-3798, or (202) 482-3534, respectively

**Final Determination**

We determine that hand trucks and certain parts thereof ("hand trucks") from the People's Republic of China ("PRC") are being sold, or are likely to be sold, in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice.

**Case History**

The preliminary determination in this investigation was issued on May 17, 2004. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final*

*Determination: Hand Trucks and Certain Parts Thereof From the People's Republic of China*, 69 FR 29509 (May 24, 2004) ("Preliminary Determination").

Since the *Preliminary Determination*, the following events have occurred. In May of 2004, the Department of Commerce ("the Department") sent out supplemental questionnaires to Qingdao Huatian Hand Truck Co., Ltd. ("Huatian"), Qingdao Taifa Group Co., Ltd. ("Taifa"), Qingdao Xinghua Group Co., Ltd. ("Xinghua"), and True Potential Company ("True Potential"). In June of 2004, the Department received responses from these four mandatory respondents participating in this investigation. From July 8 through 15, 2004, we conducted verification of the questionnaire responses of Huatian. On July 16 and 19, 2004, we conducted True Potential's verification. From July 19 through 23, 2004, we conducted Taifa's verification, and from July 26 through 30, 2004, we conducted Xinghua's verification.

On July 30, 2004, Huatian and Taifa submitted revised U.S. sales and factors of production ("FOP") databases incorporating minor error corrections reported to the Department at the opening of each company's verification. Taifa's July 30, 2004, submission contained corrections related to the so-called "allocated inputs" in addition to its minor error corrections. On September 3, 2004, the Department rejected Taifa's July 30, 2004, submission, on the grounds that the additional corrections were unsolicited new factual information. See the Department's September 3, 2004, Letter to Taifa. The Department requested that Taifa remove the additional corrections, and resubmit its FOP database without the new factual information.

In a September 8, 2004, meeting with Department officials, Taifa's counsel argued that Taifa's July 30, 2004, submission did not contain any new factual information. See Memorandum to File; Re: Ex-parte Meeting-Qingdao Taifa Group Co. Ltd, September 8, 2004. On September 9, 2004, the Department requested Taifa to resubmit its July 30, 2004, submission, and further invited all parties to comment on whether the additional corrections contained in Taifa's July 30, 2004, submission should be considered new factual information. See Memorandum to File; Re: Briefing Schedule-Rejection of Taifa's July 30, 2004 Submission, September 9, 2004. On September 13, 2004, we received comments from Taifa. On September 15, 2004, the petitioners (Gleason Industrial Products, Inc. and Precision Products,

Inc. (collectively the “petitioners”)) submitted their reply comments.

On September 10, 2004, the petitioners and their counsel submitted on the record affidavits pertaining to “certain information revealed in and corroborated by” the Department’s verification of Taifa. On September 16, 2004, the Department rejected that submission as untimely, unsolicited new factual information.

We received comments from interested parties on the *Preliminary Determination*. On September 10, 2004, we received case briefs from the petitioners, Huatian, Taifa, True Potential, and Zhenhua Industrial Group Co., Ltd. (“Zhenhua”), and on September 15, 2004, rebuttal briefs from the petitioners, Huatian, Qingdao Future Tool Inc. (“Future Tool”), Taifa, and True Potential. On September 17, 2004, the Department identified certain information in the petitioners’ September 10, 2004, case brief as untimely, unsolicited new factual information. As a result, the Department rejected the petitioners’ September 10, 2004, case brief in its entirety, and requested the petitioners to revise and resubmit their case brief without the new factual content. The petitioners resubmitted their case brief on September 21, 2004. The Department held a public hearing on September 17, 2004, at the request of the petitioners, Huatian, Taifa, True Potential, Xinghua, and Zhenhua.

#### Scope of the Investigation

For the purpose of this investigation, the product covered consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.

A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the

vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the *Harmonized Tariff Schedule of the United States* (“HTSUS”), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department’s written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

#### Scope Comments

The Department received scope exclusion/clarification comments from ten parties requesting that the Department determine whether certain products produced by these parties are covered by the scope of the investigation. The Department has addressed these requests in the following memoranda: “Scope Exclusion/Clarification Requests: Angelus Manufacturing; Custom Carts LLC; Illinois Tool Works, Inc.; Qingdao Huatian Hand Truck Co., Ltd; WelCom

Products Inc.; and LL King Corporation” from Susan Kuhbach to Jeffrey May (September 3, 2004) and “Scope Exclusion/Clarification Requests: Alton Industries, Inc.; Safco Products Company; A. J. Wholesale Distributors, Inc.; and Wilmar Corporation” from Susan Kuhbach to Jeffrey May (October 6, 2004). On September 27, 2004, Total Trolley, LLC requested that its horizontal trolley be excluded from the scope of this investigation. We did not receive this request in time for the final determination. Therefore, we will address this scope request after the final determination.

#### Period of Investigation

The period of investigation (“POI”) is April 1, 2003, through September 30, 2003, which corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2003).

#### Nonmarket Economy Status for the PRC

The Department has treated the PRC as a nonmarket economy (“NME”) country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People’s Republic of China*, 68 FR 61395, 61396 (Oct. 28, 2003). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. No party in this investigation has requested a revocation of the PRC’s NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, *see Preliminary Determination*, 69 FR at 29511.

#### Separate Rates

In our *Preliminary Determination*, we found that Huatian, Taifa, True Potential, Xinghua, Future Tool and Shandong Machinery Import & Export Group Corp. (“Shandong”) met the criteria for receiving separate antidumping rates. *See Preliminary Determination*, 69 FR at 29511–29512. The petitioners have requested that the Department deny separate rates to these companies and apply the PRC-wide rate to all exporters of the subject merchandise. As explained in *Comments 13* through *16* of the October 6, 2004, *Issues and Decision Memorandum for the Antidumping Duty Investigation of Hand Trucks and Certain Parts Thereof from the People’s Republic of China; Final Determination* (“*Decision Memorandum*”), we continue to find that each of these exporters should be assigned an individual dumping margin because the

evidence on the record indicates an absence of government control, both in law and in fact, over the export activities of Huatian, Taifa, True Potential, Xinghua, Future Tool, and Shandong. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see *Preliminary Determination*, 69 FR at 29511.

#### *Margins for Cooperative Exporters Not Selected*

For our final determination, consistent with our *Preliminary Determination*, we have calculated a weighted-average margin for Future Tool and Shandong based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. See *Preliminary Determination*, 69 FR at 29512. Companies receiving this rate are identified by name in the "Continuation of Suspension of Liquidation" section of this notice.

#### *Surrogate Country*

For purposes of the final determination, we continue to find that India is the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see *Preliminary Determination*, 69 FR at 29515.

#### *Use of Facts Otherwise Available*

Sections 776(a)(2)(A), (B), (C), and (D) of the Act provide that the Department shall use facts available when a party withholds information that has been requested by the administering authority under this subtitle; does not provide the Department with information by the established deadline or in the form and manner requested by the Department; significantly impedes a proceeding; or provides such information but the information cannot be verified. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available in selecting from among the facts available. Such adverse inference may include reliance on information derived from: (1) The petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under 753; or (4) any

other information placed on the record. See 19 CFR 351.308(c).

On the basis of our findings in this investigation, which are detailed below, we have determined that the use of facts otherwise available is appropriate for the PRC-wide entity, Taifa and Xinghua because they have not provided certain information in the form or manner requested.

#### *The PRC-Wide Rate*

As explained in the Department's *Preliminary Determination*, there are numerous producers/exporters of the subject merchandise in the PRC. See *Preliminary Determination*, 69 FR at 29513. As noted in the *Preliminary Determination*, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of the PRC and the fact that U.S. import statistics show that the responding companies did not account for all imports into the United States from the PRC, we have determined that certain PRC exporters of hand trucks failed to respond to our questionnaire. Because we did not receive data needed to calculate a margin for those companies, which we are treating as the PRC-wide entity, we are continuing to use facts available pursuant to Section 776(a) of the Act for our final determination.

Moreover, we continue to find that because the exporters comprising the PRC-wide entity failed to respond to our requests for information, they have failed to cooperate to the best of their ability. See *Preliminary Determination*, 69 FR at 29515. Accordingly, the Department will apply an adverse inference in selecting among the facts available. See Section 776(b) of the Act.

As adverse facts available, we are assigning as the PRC-wide rate the higher of: (1) The highest margin listed in the notice of initiation; or (2) the margin calculated for any respondent in this investigation. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Decision Memorandum at *Comment 1*. For purposes of the final determination of this investigation, we have further updated information used to corroborate the margin stated in the petition. The corroborated margin from the petition is now 386.75 percent. See Memorandum from John Brinkmann to the File dated October 6, 2004, regarding calculation of the adverse facts available margin.

#### *Taifa*

In the *Preliminary Determination*, we calculated a margin for Taifa in which we applied partial facts available in our calculation of normal value because of inconsistencies between the reported weights for completed hand trucks and parts, and the reported inputs used to produce the hand trucks and parts. See *Preliminary Determination*, 69 FR at 29514. Subsequent to the *Preliminary Determination*, we conducted verification of Taifa's questionnaire responses. On the last day of verification, Taifa reported an error in its allocation formula for certain inputs, which had not been included in Taifa's list of minor error corrections presented at the beginning of the verification. Because of problems with its allocation formula, Taifa was unable to present the Department with final input amounts for the FOP data fields affected by the allocation formula. See Qingdao Taifa Group Co. Ltd. Verification Report, September 3, 2004 ("Taifa Verification Report") at 17.

On July 30, 2004, Taifa submitted its revised U.S. sales and FOP response which included updated data reflecting its minor corrections and revised data for the allocated inputs, which Taifa claimed was based on the corrected allocation formula. As explained above in the "Case History" section, the Department solicited comments from the parties on whether the revised data for allocated inputs should be considered unsolicited, new factual information.

Upon review of Taifa's July 30, 2004, submission and the parties' comments, we have determined that the revised values for the allocated inputs constitute unsolicited, new factual information. Although Taifa informed the Department at verification that the per-unit amounts of the reported allocated inputs had been miscalculated due to an error in the allocation formula, Taifa was not able to provide corrected data at the time of verification. As the Department stated in the verification report: " \* \* \* because of inaccuracies in the data for the allocated inputs in the electronic spreadsheets provided by Taifa, we were unable to verify the allocation of these inputs into the second and third level spreadsheets, and the reported per-unit consumption of these inputs for any of the selected models." See Taifa Verification Report at 18. Because the Department did not verify this correction, it did not request that Taifa provide the corrected allocated input data after verification.

Taifa has argued that it is incumbent upon the Department to accept the

corrected information regarding the allocated inputs as a clerical error, as required by *NTN Bearings*. *NTN Bearing Corporation v. United States*, 74 F.3d 1204, 1208 (Fed. Cir.1995) (“*NTN Bearings*”). Following *NTN Bearings*, the Department established a six-part test, indicating that it will accept corrections of clerical errors when the following conditions are met:

(1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. See *Certain Fresh Cut Flowers from Colombia*; *Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42834 (August 19, 1996).

In order for the Department to accept a clerical error late in the proceeding, all of the six conditions must be met. We determine that Taifa's allocation error does not meet two of the six conditions.

Under this test, the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable. As the Department noted in Taifa's verification report, the Department was unable to verify the reliability of the error with source documentation. Specifically, the Department stated in the verification report that “\* \* \* because of inaccuracies in the data for the allocated inputs in the electronic spreadsheets provided by Taifa, we were unable to verify the allocation of these inputs into the second and third level spreadsheets, and the reported per-unit consumption of these inputs for any of the selected models.” See Taifa Verification Report at 18. Thus, as a result of the error, the Department could not verify (1) whether the correction submitted to the Department was accurate; or (2) any of Taifa's allocated inputs because the allocation formula given at verification was incorrect. Because the Department could not verify the corrected error, it cannot be satisfied that the corrected error is reliable, and therefore, the

second prong of the Department test is not met.

In addition, the error submitted by Taifa fails the fifth prong of the Department's test, *i.e.*, correction of this clerical error must not entail a substantial revision of the response. Specifically, the error affected the usage rates of a significant number of inputs for every model sold in the United States. Given that Taifa produced hand trucks or inputs to hand trucks in many workshops, that monthly data was compiled for each workshop over the six-month POI, and that Taifa reported FOP for a large number of hand truck models or parts, the error in Taifa's allocation formula affected thousands of pieces of information that went into the calculation of normal value. Although we cannot know the correct amount that these allocated inputs account for relative to the total normal value (because we do not know the correct amount of the allocated inputs), based on the amounts used in Taifa's July 2, 2004, submission, these inputs account for approximately 25 percent of the total value of the hand truck or hand truck part. Based on this, we determine that the correction proffered by Taifa would be a substantial revision of the company's response.

Therefore, we have not accepted this correction as a clerical error or minor correction, nor have we relied on this data contained in the July 30, 2004, submission.

The allocated input data submitted in Taifa's July 2, 2004, response is the data that the Department sought to verify. As explained by Taifa at verification, the allocated input amounts in that response were incorrect. Because Taifa failed to provide the Department with information in the form or manner requested, and the July 2, 2004, data could not be verified, we determine that the usage rates for the allocated inputs must be based on facts otherwise available, in accordance with section 776(a)(2).

We further determine that Taifa failed to cooperate by not acting to the best of its ability. Specifically, Taifa was not fully prepared for the verification of its FOP database as was evidenced by the fact that Taifa did not discover the error in its allocation formula until the last day of its verification. Moreover, Taifa did not present the Department with documentation for verification of this error. If Taifa had been fully prepared, it would have detected the allocation error during the preparation for verification, rather than the last day of verification. Thus, in accordance with section 776(b), we have applied an

adverse inference in selecting the usage information for the allocated inputs.

Because we could not verify the reported amounts of allocated inputs by model in Taifa's July 2, 2004, submission, we have selected the highest amount of the allocated inputs, as follows. In our questionnaire in this investigation, we requested Taifa to assign each hand truck model/part into one of 12 designated weight range categories based on the shipping weight of the hand truck/part. As adverse facts available, we have selected the highest reported amount for each allocated input for hand trucks/parts within a given weight range reported in Taifa's July 2, 2004, response and assigned that value to all hand trucks/parts in that weight range.

#### Xinghua

In the *Preliminary Determination*, we calculated a margin for Xinghua in which we applied partial facts available in our calculation of normal value because of inconsistencies between the reported weights for completed hand trucks and parts, and the reported inputs used to produce the hand trucks and parts. See *Preliminary Determination*, 69 FR at 29514. Subsequent to the *Preliminary Determination*, we conducted verification of Xinghua's questionnaire responses from July 26 to July 30, 2004. See Qingdao Xinghua Group Co., Ltd. Verification Report, September 3, 2004 (“Xinghua Verification Report”).

The Department submitted its verification outline to Xinghua on June 24, 2004, approximately one month prior to the commencement of verification, thereby giving Xinghua sufficient time to prepare for verification. See Xinghua's Verification Outline, dated June 24, 2004 (“Xinghua Verification Outline”). The purpose of submitting a verification outline in advance of verification is to give respondents sufficient notice about the types of source documents that the Department will seek to examine during verification, and to afford respondents sufficient time to compile source documents requested in the verification outline. As noted below, Xinghua failed to follow the instructions detailed in the Department's verification outline and failed to present source documents in a timely manner for verification. At no time prior to verification did Xinghua contact the Department with questions about verification procedures, documents to prepare for verification, or the verification outline.

Xinghua was unprepared for verification and its unpreparedness significantly impeded the verification

process. On the first day of Xinghua's FOP verification, the Department found that, despite the specific instructions given in the verification outline, Xinghua had few source documents prepared in advance for review and those that were prepared were inadequate to support the data submitted to the Department by Xinghua. See Xinghua Verification Report at 14 and 15. Department officials reiterated to Xinghua the need to provide the information requested in the outline but throughout the remaining time allocated for the full verification, Xinghua was unable to provide the required information in the form requested by the Department. See Xinghua Verification Report at 14. Because Xinghua was unprepared for verification, and was unable to provide the source documentation required, the Department was not able to verify Xinghua's factors of production. Specifically, Xinghua was not able to provide source documentation supporting its reported consumption of raw materials, energy and labor for the production of hand trucks, or otherwise explain how it derived the factor inputs it reported to the Department. Thus, the Department was unable to verify the factors of production Xinghua reported for its production of hand trucks.

Furthermore, numerous discrepancies were found in verifying Xinghua's reported U.S. sales data. See Xinghua Verification Report at 7. Because of these discrepancies, we were not able to verify Xinghua's reported quantity and value of sales to the United States.

Pursuant to section 776(a)(2) of the Act, the Department must use facts otherwise available because Xinghua withheld certain information that had been requested by the Department, failed to provide certain information by the Department's statutory deadlines and in the form and manner requested, and failed to provide certain information that could be verified. We further determine that an adverse inference is warranted in selecting from among the facts available because Xinghua failed to cooperate to the best of its ability at verification. Specifically, Xinghua was not able to explain discrepancies in its reported sales data nor to provide source documentation for or explain the reported FOP for its hand trucks.

Because the Department was unable to verify Xinghua's FOP and sales data, we have no reliable data to calculate a margin for the final determination. In accordance with sections 776(a)(2)(A), (B), (C), and (D), as well as section 776(b) of the Act, we are applying total adverse facts available to Xinghua. As

adverse facts available, we are assigning Xinghua the rate of 386.75 percent which is also the PRC-wide rate, and the highest margin listed in the notice of initiation, as corroborated by the Department.

#### *New Factual Information*

As stated above in the "Case History" section, both Huatian and Taifa submitted revised U.S. sales and FOP databases on July 30, 2004. Taifa's July 30, 2004, submission included minor error corrections presented to the Department at the beginning of verification, revised usage data for allocated inputs (discussed above in the "Use of Facts Otherwise Available" section), and other changes unrelated to the minor error corrections or allocated inputs. Huatian's July 30, 2004, submission included minor error corrections presented to the Department at the beginning of verification and certain other changes unrelated to the minor error corrections.

For both companies, we are treating these other changes as untimely filed, unsolicited factual information.

Under 19 CFR 351.302(d), the Department normally would reject Huatian's and Taifa's July 30, 2004, submissions in their entirety and request the companies resubmit their revised FOP responses without the new information. However, due to time constraints and the pending final determination in this investigation, it was not feasible for the Department to reject and return Huatian's and Taifa's July 30, 2004, submissions, request revised submissions, and still be able to issue a final determination by the statutory deadline of October 6, 2004. As such, the Department has retained Huatian's and Taifa's July 30, 2004, submissions in their entirety. Although we have retained these responses, we have not considered the untimely filed, unsolicited information in making our final determination. See *Comments 1 and 7 of the Decision Memorandum*.

#### *Analysis of Comments Received*

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the *Decision Memorandum*, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at [http://](http://ia.ita.doc.gov)

[ia.ita.doc.gov](http://ia.ita.doc.gov) or <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

#### *Changes Since the Preliminary Determination*

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the *Decision Memorandum*.

#### *Verification*

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by the respondents.

#### *Continuation of Suspension of Liquidation*

Pursuant to section 735(c)(1)(B) of the Act, we will instruct Customs and Border Protection ("CBP") to continue to suspend liquidation of all imports of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after May 24, 2004, the date of publication of our *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are provided below:

Manufacturer/Exporter	Weighted-average margin (percent)
Huatian .....	45.04
Taifa .....	27.00
True Potential .....	24.90
Xinghua .....	386.75
Future Tool .....	30.56
Shandong .....	30.56
PRC-wide Rate .....	386.75

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

#### *Disclosure*

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

*ITC Notification*

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

*Notification Regarding APO*

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: October 6, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

## Appendix—Issues in the Decision Memorandum

### Comments

#### *Company Specific Issues*

Comment 1: The Department Should Apply Facts Available to Huatian, Taifa, True Potential, and Xinghua.

#### *Huatian*

Comment 2: The Department Should Revise Huatian's FOP Data to Account for Purchased Bearings.

Comment 3: The Department Should Assign an Appropriate Surrogate Value for Axle Rods for Huatian.

Comment 4: The Department Should Apply Facts Available to Value Steel Plate for Huatian.

Comment 5: The Department Should Treat Huatian's Hand Truck Samples as a Quantity Discount.

Comment 6: The Department Should Not Adjust Huatian's Sales Transactions with a Negative Net United States Price.

*Taifa*

Comment 7: The Department Should Accept Taifa's July 30, 2004, Submission.

Comment 8: The Department Should Disregard Taifa's Market Economy Purchases.

Comment 9: The Department Should Consider the Role Played by Taifa Import & Export Company in Calculating the SG&A Expenses for Taifa.

Comment 10: The Department Should Adjust Taifa's Sales Database to Reflect Customer Discounts.

Comment 11: The Department Should Revise Taifa's FOP Database to Account for Packing Materials.

*True Potential*

Comment 12: The Department Should Add Trading Company Factors for SG&A and Profit in Calculating True Potential's Normal Value.

*Separate Rates*

Comment 13: The Department Should Deny Separate-Rates Treatment for All Respondents.

Comment 14: The Department Should Not Calculate a Separate Rate for True Potential.

Comment 15: The Department Should Calculate a Separate Rate for Zhenhua.

Comment 16: The Department Should Not Calculate Separate Rates for Future Tool and Shangdong.

*General Issues*

Comment 17: The Department Should Not Use the Indian Electricity Tariff Because it is Aberrational.

Comment 18: The Department Miscalculated SG&A and Profit Amounts.

Comment 19: The Department Should Not Use Aberrational Financial Data to Value Factory Overhead, SG&A Expenses, and Profit.

Comment 20: The Department Should Include the Cost of Packing Materials and Labor in Calculating Factory Overhead and SG&A.

Comment 21: The Department Should Include Financial Data from an Indian Hand Truck Producer in Calculating Financial Ratios.

Comment 22: The Department Should Revise the Profit Rate for the Final Calculation.

[FR Doc. E4-2608 Filed 10-13-04; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 032204C]

#### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of meeting cancellation.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will cancel the previously scheduled SEDAR Red Snapper Review Workshop. See **SUPPLEMENTARY INFORMATION.**

**DATES:** The meeting was scheduled to take place October 25–29, 2004.

**ADDRESSES:** Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228-2815.

**SUPPLEMENTARY INFORMATION:** The notice was published in the **Federal Register** on March 31, 2004 at 69 FR 16896.

The Gulf of Mexico, South Atlantic and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the SEDAR process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) data workshop, (2) assessment workshop, and (3) review workshop. The SEDAR Red Snapper review workshop is being postponed until a second assessment workshop can be conducted in December. The new dates for the SEDAR Review Workshop will be released as soon as they become available.

Dated: October 8, 2004.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E4-2601 Filed 10-13-04; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 090904F]

#### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a public meeting of its Standing and Special Mackerel and Reef Fish Scientific and Statistical Committees (SSCs).

**DATES:** The meeting will be convened by conference call at 10 a.m. EST on November 1, 2004.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for locations of listening stations.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228-2815.

**SUPPLEMENTARY INFORMATION:** Persons wishing to listen to the call may do so at the following locations:

1. NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL, Contact: Gary Fitzhugh at 850-234-6541, extension 214.

2. NMFS Southeast Regional Office, 9721 North Executive Center Drive, St. Petersburg, FL, Contact: Peter Hood at 727-570-5728.

3. NMFS Pascagoula Laboratory, 3209 Frederic Street, Pascagoula, MS, Contact: Cheryl Hinkel at 228-762-4591.

4. NMFS Galveston Laboratory, 4700 Avenue U, Galveston, TX, Contact: Rhonda O'Toole at 409-766-3500.

The Council will convene its SSCs to review public hearing drafts of Amendment 15 to the Coastal Migratory Pelagics Fishery Management Plan (FMP) and Amendment 24 to the Reef Fish FMP. Each of these amendments contain alternatives to allow the existing commercial permit moratoria to expire, extend the moratoria for 5 or 10 years, or replace the moratoria with permanent limited access systems that would, in essence, maintain the cap on the number of permits indefinitely, or until replaced or eliminated by additional actions by the Council.

Although other non-emergency issues not on the agendas may be discussed by the SSCs, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SSCs will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

#### Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council office by September 24, 2004.

Dated: October 8, 2004.

**Alan D. Risenhoover,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E4-2603 Filed 10-13-04; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 100704B]

#### New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a 2-day public meeting of its Joint Scallop Plan Development Team (PDT) and Advisory Panel in October, 2004. Recommendations from the panels will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will held on Thursday, October 28, 2004 at 9 a.m. and Friday, October 29, 2004 at 9 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997-1281.

*Council address:* New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** In preparation for the development of a Stock Assessment and Fishery Evaluation (SAFE) Report for 2005, a Joint PDT and Advisory Panel meeting will conduct initial discussions to focus on identification of: problems and issues that the SAFE Report should analyze; SAFE Report document structure and organization; data and analytic requirements; timing when data become available for analysis and how various analyses interrelate; delegation and responsibility for conducting analyses and preparing written reports; other issues related to the 2005 SAFE Report, as needed.

The SAFE Report will be used as a baseline in Framework Adjustment 18 for measures to be implemented in the 2006 fishing year.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 8, 2004.

**Alan D. Risenhoover,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E4-2602 Filed 10-13-04; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 100104F]

#### Endangered and Threatened Species; Take of Anadromous Fish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Application for scientific research permit 1499.

**SUMMARY:** Notice is hereby given that NMFS has received a scientific research permit application relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

**DATES:** Comments or requests for a public hearing on the application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight-saving time on November 15, 2004.

**ADDRESSES:** Written comments on the application should be sent to Protected Resources Division, NMFS, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737. Comments may also be sent via fax to 503-230-5435 or by e-mail to [resapps.nwr@NOAA.gov](mailto:resapps.nwr@NOAA.gov).

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, Portland, OR (ph.: 503-231-2005, Fax: 503-230-5435, e-mail:

Garth.Griffin@noaa.gov). Permit application instructions are available at <http://www.nwr.noaa.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Species Covered in This Notice

The following listed species (evolutionarily significant unit) is covered in this notice:

Chinook salmon (*O. tshawytscha*): threatened naturally produced and artificially propagated Puget Sound (PS).

##### Authority

Scientific research permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR Parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

##### Application Received

###### Permit 1499

The Battelle Marine Sciences Laboratory (BMSL) is requesting a 1-year research permit to annually capture, handle, and release adult and juvenile PS chinook salmon. The research would take place in Puget Sound, Washington. The purpose of the research is to develop a more comprehensive understanding of salmon behavior and movement near large overwater structures. The BMSL intends to determine juvenile fish movement, residence time, activity pattern, and migration routes along unshaded shoreline and adjacent to and under ferry structures. The research would benefit the fish by determining fish behavior near ferry terminals and providing information to be used in reducing the impact the structures have on listed fish. The BMSL proposes to capture the fish using enclosure nets. Most of the captured fish would be anesthetized, identified, counted, checked for tags and marks, allowed to

recover, and released. A portion of the juvenile salmonids would be measured, implanted with acoustic tags, released, and tracked remotely. The BMSL does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: October 8, 2004.

Marta Nammack,

Acting Division Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04-23063 Filed 10-13-04; 8:45 am]

BILLING CODE 3510-22-S

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 100104G]

##### Endangered and Threatened Species; Take of Anadromous Fish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of 21 scientific research permits and permit modifications.

**SUMMARY:** Between June 2, 2004 and July 30, 2004, NMFS' Northwest Region issued 21 permits and permit modifications allowing endangered and threatened species of Pacific salmon and steelhead to be taken for scientific research purposes under the Endangered Species Act (ESA) of 1973. The research actions and the species they affect are listed in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** The permits, permit applications, and related documents are available for review during business hours by appointment at NMFS' Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737 (ph: 503-230-5400, fax: 503-230-5435).

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, Portland, OR (phone: 503-

231-2005, fax: 503-230-5435, e-mail: [Garth.Griffin@noaa.gov](mailto:Garth.Griffin@noaa.gov)).

#### SUPPLEMENTARY INFORMATION:

##### Authority

Scientific research permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR Parts 222–226). NMFS issues permits/modifications based on findings that such permits and modifications: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits.

##### Species Covered in this Notice

The listed species/evolutionarily significant units (ESUs) covered by this notice are listed below and identified in the subsequent table by the numbers (in parentheses) that precede them.

- (1) Threatened Puget Sound chinook salmon (*Oncorhynchus tshawytscha*)
- (2) Threatened Lower Columbia River (LCR) chinook salmon (*O. tshawytscha*)
- (3) Threatened Snake River (SR) spring/summer chinook salmon (*O. tshawytscha*)
- (4) Threatened SR fall chinook salmon (*O. tshawytscha*)
- (5) Endangered Upper Columbia River (UCR) spring-run chinook salmon (*O. tshawytscha*)
- (6) Threatened Upper Willamette River (UWR) chinook salmon (*O. tshawytscha*)
- (7) Threatened Hood Canal summer-run chum salmon (*O. keta*)
- (8) Threatened Columbia River chum salmon (*O. keta*)
- (9) Threatened LCR steelhead (*O. mykiss*) (*O. keta*)
- (10) Threatened Middle Columbia River steelhead (*O. keta*)
- (11) Threatened SR steelhead (*O. keta*)
- (12) Endangered UCR steelhead (*O. keta*)
- (13) Threatened Upper Willamette (UWR) Steelhead (*O. keta*)
- (14) Threatened Southern Oregon/Northern California Coasts coho salmon (*O. kisutch*)
- (15) Threatened (at the time of issuance) Oregon Coast coho salmon (*O. kisutch*)
- (16) Endangered SR sockeye salmon (*O. nerka*)

TABLE 1. SCIENTIFIC RESEARCH PERMIT ACTIONS AFFECTING THREATENED PACIFIC SALMON AND STEELHEAD

Permit Number	Affected Species/ESUs	Permittee	FEDERAL REGISTER Notice of Application Receipt
1119 .....	5, 12 .....	U.S. Fish and Wildlife Service .....	March 12, 2004 (69 FR 11841).
1127 .....	3, 11 .....	Shoshone-Bannock Tribe (SBT) .....	March 12, 2004 (69 FR 11841).
1152 .....	3 .....	Oregon Department of Fish and Wildlife .....	February 13, 2004 (69 FR 7205).
1156 .....	1, 3, 4, 7, 10, 11, 15.	U.S. Environmental Protection Agency .....	April 9, 2004 (69 FR 18877).
1341 .....	3 .....	SBT .....	April 9, 2004 (69 FR 18877).
1345 .....	1 .....	Washington Department of Fish and Wildlife (WDFW) .....	April 9, 2004 (69 FR 18877).
1366 .....	2, 3, 4, 5, 11, 12, 16.	Oregon Cooperative Fish and Wildlife Research Unit .....	March 12, 2004 (69 FR 11841).
1410 .....	2, 3, 4, 5, 6, 8, 11, 14, 15.	Northwest Fisheries Science Center .....	February 13, 2004 (69 FR 7205).
1458 .....	3 .....	Ducks Unlimited .....	February 13, 2004 (69 FR 7205).
1459 .....	1 .....	Western Washington University .....	February 13, 2004 (69 FR 7205).
1460 .....	1 .....	Port of Tacoma .....	February 13, 2004 (69 FR 7205).
1461 .....	2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 16.	U.S. Geological Survey (USGS) .....	February 13, 2004 (69 FR 7205).
1465 .....	3, 4, 11, 16 ....	Idaho Department of Environmental Quality .....	March 12, 2004 (69 FR 11841).
1469 .....	14 .....	Ecosystems Research Institute .....	March 12, 2004 (69 FR 11841).
1476 .....	5, 12 .....	University of Washington .....	April 26, 2004 (69 FR 22488).
1477 .....	2, 4 .....	Idaho Cooperative Fish and Wildlife Research Unit .....	April 26, 2004 (69 FR 22488).
1478 .....	2, 8, 9 .....	USGS .....	April 26, 2004 (69 FR 22488).
1479 .....	2, 9 .....	USGS .....	April 26, 2004 (69 FR 22488).
1480 .....	5, 12 .....	USGS .....	April 26, 2004 (69 FR 22488).
1482 .....	5, 12 .....	WDFW .....	April 9, 2004 (69 FR 18877).
1484 .....	1, 2, 8, 9 .....	Washington Department of Natural Resources .....	April 9, 2004 (69 FR 18877).

Dated: October 8, 2004.

**Marta Nammack,**

*Acting Division Chief, Endangered Species  
Division, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 04-23065 Filed 10-13-04; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE****National Telecommunications and  
Information Administration****Announcement of Performance Review  
Board Members**

**AGENCY:** National Telecommunications  
and Information Administration,  
Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** 5 CFR 430.310 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. This notice announces the names of new and existing members of the National Telecommunications and Information Administration's Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:**  
Darlene Haywood, International Trade  
Administration, Office of Human  
Resources Management, at (202) 482-  
2850, Room 7060, Washington, DC  
20230.

**SUPPLEMENTARY INFORMATION:** The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service.

The Assistant Secretary for Communications and Information, Michael D. Gallagher, has named the following members of the National Telecommunications and Information Performance Review Board:

1. Frederick R. Wentland, Associate Administrator for Spectrum Management (Chairperson).
2. Bernadette McGuire-Rivera, Associate Administrator for Telecommunications and Information Applications.
3. Alan W. Vincent, Associate Administrator for Telecommunication Sciences and Director, Institute for Telecommunications Sciences.
4. Robin R. Layton, Associate Administrator for International Affairs.
5. Michael J. Crison, Director, Requirements, Planning and Systems Integration Division, National Oceanic and Atmospheric Association (outside reviewer).

6. Darlene F. Haywood, Executive Secretary, ITA Office of Human Resources Management at (202) 482-2850.

Dated: October 7, 2004.

**Doris W. Brown,***Human Resources Officer.*

[FR Doc. 04-23061 Filed 10-13-04; 8:45 am]

BILLING CODE 3510-25-P

**COMMODITY FUTURES TRADING  
COMMISSION****Agency Information Collection  
Activities Under OMB Review**

**AGENCY:** Commodity Futures Trading  
Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

**DATES:** Comments must be submitted on or before November 12, 2004.

**FOR FURTHER INFORMATION OR A COPY  
CONTACT:** David Van Wagner at CFTC,  
(202) 418-5481; FAX: (202) 418-5536;  
e-mail: [dvanwagner@cftc.gov](mailto:dvanwagner@cftc.gov) and refer to OMB Control No. 3038-0022.

**SUPPLEMENTARY INFORMATION:**

*Title:* Rules Pertaining to Contract  
Markets and Their Members (OMB

Control No. 3038-0022). This is a request for extension of a currently approved information collection.

**Abstract:** Section 5c(c) of the Commodity Exchange Act, 7 U.S.C. 7a-2(c), establishes procedures for registered entities (designated contract markets, registered derivatives transaction execution facilities and registered derivatives clearing organizations) to implement new rules and rule amendments by either seeking prior approval or (for most rules) certifying to the Commission that such rules or rule amendments do not violate the Act or Commission regulations. Rules 40.4, 40.5 and 40.6 implement these statutory provisions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published on August 5, 2004 (69 FR 47419-01).

**Burden statement:** The respondent burden for this collection is estimated to average .83 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:** 11,006.

**Estimated number of responses:** 13,118.

**Estimated total annual burden on respondents:** 57 hours.

**Frequency of collection:** On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038-0022 in any correspondence.

David Van Wagner, Division of Market Oversight, U.S. Commodity futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and

Office of Information and Regulatory Affairs, Office of Management and

Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: October 6, 2004.

**Edward W. Colbert,**

*Deputy Secretary of the Commission.*

[FR Doc. 04-22968 Filed 10-13-04; 8:45 am]

**BILLING CODE 6351-01-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by November 15, 2004.

**Title, Form, and OMB Number:** Application for former Spouse Payments From Retired Pay; DD Form 2293; OMB Control Number 0730-0008.

**Type of Request:** Revision.

**Number of Respondents:** 23,481.

**Responses Per Respondent:** 1.

**Annual Responses:** 23,481.

**Average Burden Per Response:** 15 minutes.

**Annual Burden Hours:** 5,870.

**Needs and Uses:** Under 10 U.S.C. 1408, State courts may divide military retired pay as property or order alimony and child support payments from that retired pay. The former spouse may apply to the Defense Finance and Accounting Service (DFAS) for direct payment of these monies by using DD Form 2293. This information collection is needed to provide DFAS the basic data needed to process the request.

**Affected Public:** Individuals or households.

**Frequency:** On occasion.

**Respondent's Obligation:** Required to obtain or retain benefits.

**OMB Desk Officer:** Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

**DoD Clearance Officer:** Mr. Robert Cushing.

Written requests for copies of the information collection proposal should

be sent to Mr. Cushing, WHS/ESCD/ Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202-4326.

Dated: October 5, 2004.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04-22971 Filed 10-13-04; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Submission of OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by November 15, 2004.

**Title and OMB Number:** Defense Federal Acquisition Regulation Supplement (DFARS) Section 223.570, Drug-free work force, and the associated clause at DFARS 252.223-7004; OMB Control Number 0704-0336.

**Type of Request:** Extension.

**Number of Respondents:** 18,012.

**Responses per Respondent:** 1.

**Annual Responses:** 18,012.

**Average Burden per Response:** 48 hours.

**Annual Burden Hours:** 980,096.

**Needs and Uses:** This information collection requires DoD contractors to maintain records regarding drug-free work force programs provided to contractor employees. The information is used to ensure reasonable efforts to eliminate the unlawful use of controlled substances by contractor employees.

**Affected Public:** Businesses or other for profit and not-for-profit institutions.

**Frequency:** Recordkeeping.

**Respondent's Obligation:** Required to obtain or retain benefits.

**OMB Desk Officer:** Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

**DoD Clearance Officer:** Mr. Robert Cushing.

Written requests for copies of the information collection proposal should

be sent to Mr. Cushing, WHS/ESCD/ Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202-4326.

Dated: October 5, 2004.

**Patricia L. Toppings,**  
Alternate OSD Federal Register Liaison  
Officer, Department of Defense.  
[FR Doc. 04-22979 Filed 10-13-04; 8:45 am]  
BILLING CODE 5001-06-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the United States Air Force Academy, Office of Admissions, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 13, 2004.

**ADDRESSES:** Written comments and recommendation on the proposed information collection should be sent to United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to above address, or call United States Air Force Academy, Office of Admissions (719) 333-7291.

*Title, Associated Form, and OMB Number:* Air Force Academy Applications, United States Air Force Academy Form 149, OMB Number 0701-0087.

**Needs and Uses:** The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

**Affected Public:** Individuals or households.

**Annual Burden Hours:** 4,925.

**Number of Respondents:** 9,850.

**Responses per Respondent:** 1.

**Average Burden per Response:** 30 Minutes.

**Frequency:** On occasion.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the Information on this form is not collected the individual cannot be considered for admittance to the Air Force Academy.

Dated: October 5, 2004.

**Patricia L. Toppings,**  
Alternate OSD Federal Register, Liaison  
Officer, Department of Defense.  
[FR Doc. 04-22980 Filed 10-13-04; 8:45 am]  
BILLING CODE 5001-06-P

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Updated Senior Executive Service Performance Review Board

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice.

**SUMMARY:** This notice announces the membership of the updated Defense Nuclear Facilities Safety Board (DNFSB) Senior Executive Service (SES) Performance Review Board. It also announces the DNFSB senior executives who are available to serve on the SES performance review boards of other small, independent Federal commissions, committees and boards.

**EFFECTIVE DATE:** September 20, 2004.

**ADDRESSES:** Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004-2001.

**FOR FURTHER INFORMATION CONTACT:** Deborah Bisciegla by telephone at (202) 694-7041 or by e-mail at [debbieb@dnfsb.gov](mailto:debbieb@dnfsb.gov).

**SUPPLEMENTARY INFORMATION:** 5 U.S.C. 4314(c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of

Personnel Management, one or more Senior Executive Service performance review boards. The board shall review and evaluate the initial summary rating of the senior executive's performance, the executive's response, and the higher level official's comments on the initial summary rating. The DNFSB is a small, independent Federal agency; therefore, the members of the DNFSB SES Performance Review Board listed in this notice are drawn from the SES ranks of other agencies. This notice updates the membership of DNFSB's SES Performance Review Board as it was last published at 66 FR 49169 (September 26, 2001).

The following persons comprise a standing roster to serve as members of the Defense Nuclear Facilities Safety Board SES Performance Review Board: Garrett W. Brass, Executive Director,

Arctic Research Commission  
Gerald J. Smith, President, Barry M. Goldwater Scholarship & Excellence in Education Foundation  
Christopher W. Warner, General Counsel, U.S. Chemical Safety and Hazard Investigation Board  
Leon A. Wilson, Jr., Executive Director, Committee for Purchase from People Who Are Blind or Severely Disabled

The following DNFSB SES members comprise a standing roster to serve on the performance review boards of other small, independent Federal commissions, committees and boards: Richard A. Azzaro, General Counsel  
J. Kenton Fortenberry, Technical Director  
James J. McConnell, Deputy Technical Director  
Joseph R. Neubeiser, Deputy General Manager  
Kenneth M. Pusateri, General Manager  
Joel R. Schapira, Deputy General Counsel

**Kenneth M. Pusateri,**  
Chairman, Executive Resources Board.  
[FR Doc. 04-23091 Filed 10-13-04; 8:45 am]  
BILLING CODE 3670-01-P

## DEPARTMENT OF EDUCATION

### Meeting of the National Advisory Council on Indian Education

**AGENCY:** National Advisory Council on Indian Education (NACIE), U.S. Department of Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify

the general public of their opportunity to attend. This notice also describes the functions of the Council. Notice of the Council's meetings is required under Section 10 (a)(2) of the Federal Advisory Committee Act and by the Council's charter.

**Agenda:** The purpose of the meeting will be to discuss the Federal Interagency Plan and the tasks outlined for implementation. Other topics will include Council subcommittee reports on Indian education research, No Child Left Behind (NCLB) updates, and planning for the consultation sessions as identified in Executive Order (E.O.) 13336.

**Date and Time:** October 26, 2004—9 a.m. to 5 p.m.

**Location:** Hyatt Regency Phoenix, 122 North Second Street, Phoenix, AZ 85004. Moran Room, 2nd Floor.

**FOR FURTHER INFORMATION CONTACT:** Bernard Garcia, Group Leader, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202-260-1454. Fax: 202-260-7779.

**SUPPLEMENTARY INFORMATION:** The Council advises the Secretary of Education concerning the funding and administration (including the development of regulations, and administrative policies and practices) of any program, including any program established under Title VII, Part A of the ESEA, with respect to which the Secretary has jurisdiction and that includes Indian children or adults as participants or that may benefit Indian children or adults. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council, including any recommendations that the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participations or that may benefit Indian children or adults, and recommendations concerning the funding of any such program. The Council also makes recommendations to the Secretary for filling the position of the Director of Indian Education whenever a vacancy occurs.

The purpose of E.O. 13336, dated April 30, 2004, is to assist American Indian and Alaska Native students in meeting the challenging student academic standards of the No Child Left Behind Act of 2001 (Public Law 107-110) in a manner that is consistent with tribal traditions, languages, and cultures. The E.O. establishes a Federal Interagency Working Group on American Indian and Alaska Native Education (Working Group) to oversee

the implementation and the Working Group may consult with representatives of NACIE.

The general public is welcome to attend the October 26, 2004 meeting. Individuals who need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Bernard Garcia at 202-260-1454 by October 15, 2004. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

A summary of the activities of the meeting and other related materials that are informative to the public will be available to the public within 14 days after the meeting. Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C141, Washington, DC 20202.

Dated: October 7, 2004.

**Rod Paige,**

*Secretary.*

[FR Doc. 04-22977 Filed 10-13-04; 8:45 am]

**BILLING CODE 4000-01-M**

## DEPARTMENT OF EDUCATION

### National Advisory Committee on Institutional Quality and Integrity, (National Advisory Committee); Meeting

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity, Department of Education.

#### What Is the Purpose of This Notice?

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations before the Committee. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

#### When and Where Will the Meeting Take Place?

We will hold the public meeting on December 13, 2004 from 8:30 a.m. until approximately 5 p.m., on December 14, 2004 from 8:30 a.m. until approximately 5 p.m., and on December 15, 2004 from 8:30 a.m. until approximately 1 p.m. in Salon I at the Ritz Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, Virginia 22202. You may call

the hotel on (703) 415-5000 to inquire about rooms.

#### What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

#### Who Is the Contact Person for the Meeting?

Please contact Ms. Bonnie LeBold, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7592, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219-7009, fax: (202) 219-7008, e-mail:

*Bonnie.LeBold@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339.

#### What Is the Authority for the National Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

#### What Are the Functions of the National Advisory Committee?

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or

State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.

- The relationship between: (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) state licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

#### **What Items Will Be on the Agenda for Discussion at the Meeting?**

Agenda topics will include the review of agencies that have submitted petitions for renewal of recognition, agencies that have submitted interim reports, an agency that has submitted a progress report and requested an expansion of scope of recognition, and a Federal agency seeking degree-granting authority.

#### **What Agencies Will the Advisory Committee Review at the Meeting?**

Please note that the agencies listed below, which were originally scheduled for review during the National Advisory Committee's June 2004 meeting, were deferred and will be reviewed at the December 2004 meeting.

- Accrediting Bureau of Health Education Schools.
- American Academy for Liberal Education.
- American Speech-Language-Hearing Association, Council on Academic Accreditation in Audiology and Speech-Language Pathology.
- National Association of Schools of Art and Design, Commission on Accreditation.
- National Association of Schools of Dance, Commission on Accreditation.
- National Association of Schools of Music, Commission on Accreditation, Commission on Non-Degree-Granting Accreditation, Commission on Community/Junior College Accreditation.
- National Association of Schools of Theatre, Commission on Accreditation.
- New England Association of Schools and Colleges, Commission on Institutions of Higher Education.
- New England Association of Schools and Colleges, Commission on Technical and Career Institutions.
- Puerto Rico State Agency for the Approval of Public Postsecondary Vocational, Technical Institutions and Programs.

Any requests for third-party oral presentations regarding these agencies that were received by May 21, 2004, in

accordance with the **Federal Register** notice published on March 26, 2004, will become part of the official record. Those comments will be considered by the National Advisory Committee when it reviews the agencies at the December 2004 meeting.

The following agencies will be reviewed during the December 2004 meeting of the Advisory Committee:

#### **Nationally Recognized Accrediting Agencies**

##### *Petitions for Renewal of Recognition*

1. Accrediting Bureau of Health Education Schools (Current scope of recognition: the accreditation of private, postsecondary allied health education institutions and institutions that offer predominantly allied health programs, private medical assistant programs, and public and private medical laboratory technician programs leading to the Associate of Applied Science and the Associate of Occupational Science degrees.) (Requested scope of recognition: The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs, and the programmatic accreditation of allied health programs, leading to a certificate, diploma, or the Associate of Applied Science and Associate of Occupational Science degrees, including those offered via distance education.)

2. Accrediting Commission of Career Schools and Colleges of Technology (Current scope of recognition: The accreditation of private, postsecondary, non-degree-granting institutions and degree-granting institutions, including those granting associate and baccalaureate degrees, that are predominantly organized to educate students for occupational, trade and technical careers, and including institutions that offer programs via distance education.) (Requested scope of recognition: the accreditation of private, postsecondary, non-degree-granting institutions and degree-granting institutions in the United States, including those granting associate and baccalaureate degrees, that are predominantly organized to educate students for occupational, trade and technical careers, and including institutions that offer programs via distance education.)

3. American Psychological Association, Committee on Accreditation (Current scope of recognition: The accreditation of doctoral programs in clinical, counseling, school and combined professional-scientific psychology;

predoctoral internship programs in professional psychology; and postdoctoral residency programs in professional psychology.) (Requested scope of recognition: The accreditation in the United States of doctoral programs in clinical, counseling, school and combined professional-scientific psychology; predoctoral internship programs in professional psychology; and postdoctoral residency programs in professional psychology.)

4. National Accrediting Commission of Cosmetology Arts and Sciences (Current scope of recognition: The accreditation of postsecondary schools and departments of cosmetology arts and sciences and massage therapy.) (Requested scope of recognition: The accreditation of postsecondary schools and departments of cosmetology arts and sciences and massage therapy in the United States.)

5. Transnational Association of Christian Colleges and Schools, Accreditation Commission (Current scope of recognition: the accreditation and preaccreditation ("Candidate" status) of postsecondary institutions that offer certificates, diplomas, and associate, baccalaureate, and graduate degrees, including institutions that offer distance education.) (Requested scope of recognition: The accreditation and preaccreditation ("Candidate" status) of postsecondary institutions in the United States that offer certificates, diplomas, and associate, baccalaureate, and graduate degrees, including institutions that offer distance education.)

6. Western Association of Schools and Colleges, Accrediting Commission for Schools (Current and requested scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of adult and postsecondary schools that offer programs below the degree level in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.)

##### *Petition for an Expansion of Scope and a Progress Report*

(A petition for an expansion of scope and a progress report on the agency's experience with its new method and system to assess its institutions' success with respect to student achievement.)

1. Distance Education and Training Council, Accrediting Commission (Current scope of recognition: The accreditation of postsecondary institutions in the United States offering programs primarily by the distance

education method up through the first professional degree level. Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.) (Requested scope of recognition: The accreditation of postsecondary institutions in the United States that offer degree programs primarily by the distance education method up through the first professional degree level, and are specifically certified by the agency as accredited for Title IV purposes; and the accreditation of postsecondary institutions in the United States not participating in Title IV that offer programs primarily by the distance education method up through the first professional degree level. Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs, other than to permit degree-granting schools certified by DETC as accredited for Title IV purposes to establish eligibility to participate in the Distance Education Demonstration Program.)

#### *Interim Reports*

(An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. American Academy for Liberal Education.
2. American Speech-Language-Hearing Association, Council on Academic Accreditation in Audiology and Speech-Language Pathology.
3. Commission on English Language Program Accreditation.
4. Montessori Accreditation Council for Teacher Education, Commission on Accreditation.
5. National Association of Schools of Art and Design, Commission on Accreditation.
6. National Association of Schools of Dance, Commission on Accreditation.
7. National Association of Schools of Music, Commission on Accreditation, Commission on Non-Degree-Granting Accreditation, Commission on Community/Junior College Accreditation.
8. National Association of Schools of Theatre, Commission on Accreditation.
9. New England Association of Schools and Colleges, Commission on Institutions of Higher Education.
10. New England Association of Schools and Colleges, Commission on Technical and Career Institutions.
11. Teacher Education Accreditation Council, Accreditation Committee.

### **State Agencies Recognized for the Approval of Public Postsecondary Vocational Education**

#### *Petitions for Renewal of Recognition*

1. Oklahoma State Regents for Higher Education.
2. Puerto Rico State Agency for the Approval of Public Postsecondary Vocational, Technical Institutions and Programs.

#### *Interim Report*

1. Missouri State Board of Education.

### **Federal Agency Seeking Degree-Granting Authority**

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

#### *Proposed Master's Degree-Granting Authority*

1. National Defense University, Joint Forces Staff College, Joint Advanced Warfighting School, Norfolk, VA (request to award a Master's in Science (M.S.) degree in Joint Campaign Planning and Strategy).

#### *Who Can Make Third-Party Oral Presentations at This Meeting?*

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

#### *How Do I Request To Make an Oral Presentation?*

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person *so that the request is received via mail, fax, or e-mail no later than November 22, 2004*. Your request

(*no more than 6 pages maximum*) must include:

1. The names, addresses, phone and fax numbers, and e-mail addresses of all persons seeking an appearance,
2. The organization they represent, and
3. A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that *any attachments are included in the 6-page limit*. Please do not send materials directly to Committee members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Documents received after the November 22, 2004 deadline will not be distributed to the Advisory Committee for their consideration. Individuals making oral presentations may not distribute written materials at the meeting.

#### *If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?*

This notice requests third-party oral testimony, not written comment. Requests for written comments on agencies that are being reviewed during this meeting were published in the **Federal Register** on February 5, 2004, July 16, 2004 and August 11, 2004. An additional notice requesting written comments is being published in today's **Federal Register**. The Advisory Committee will receive and consider only written comments submitted by the deadlines specified in the above-referenced **Federal Register** notices.

#### *How Do I Request To Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?*

At the conclusion of the meeting, the Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. LeBold before or during the meeting.

#### *How May I Obtain Access to the Records of the Meeting?*

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006 between the

hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

#### *How May I Obtain Electronic Access to This Document?*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/legislation/FedRegister>. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530. *Note:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

**Authority:** 5 U.S.C. Appendix 2.

Dated: October 7, 2004.

**Sally L. Stroup,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 04-23017 Filed 10-13-04; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### **Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education**

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

#### **What Is the Purpose of This Notice?**

On August 11, 2004, we published a notice in the **Federal Register** to invite written comments on the petition for expansion of scope submitted by the Distance Education and Training Council (DETC) that will be reviewed at the Advisory Committee meeting to be held on December 13-15, 2004. This notice amends the requested scope of recognition to clarify the relationship between an institution's recognition by DETC and the institution's Title IV eligibility. This notice invites written comments on the amended scope of recognition requested by DETC.

#### **Petition for an Expansion of Scope**

1. Distance Education and Training Council, Accrediting Commission (Current scope of recognition: The accreditation of postsecondary institutions in the United States offering programs primarily by the distance education method up through the first professional degree level. Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs.) (Requested scope of recognition: The accreditation of postsecondary institutions in the United States that offer degree programs primarily by the distance education method up through the first professional degree level, and are specifically certified by the agency as accredited for Title IV purposes; and the accreditation of postsecondary institutions in the United States not participating in Title IV that offer programs primarily by the distance education method up through the first professional degree level. Title IV Note: Accreditation by this agency does not enable the entities it accredits to establish eligibility to participate in Title IV programs, other than to permit degree-granting schools certified by DETC as accredited for Title IV purposes to establish eligibility to participate in the Distance Education Demonstration Program.)

#### **Where Should I Submit My Comments?**

Please submit your written comments by November 15, 2004 to Carol Griffiths, Accrediting Agency Evaluation, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, 1990 K Street, NW., 7th Floor, Room 7105, Washington, DC 20006-8509, telephone: (202) 219-7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339.

#### **What is the Authority for the Advisory Committee?**

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

#### **Will This Be My Only Opportunity To Submit Written Comments?**

Yes, this notice announces the only opportunity you will have to submit written comments. However, another **Federal Register** notice will announce the meeting and invite individuals and/

or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer an opportunity to submit written comment.

#### **What Happens to the Comments That I Submit?**

We will review your comments, in response to this notice, as part of our evaluation of the Distance Education and Training Council's compliance with the Secretary's Criteria for Recognition of Accrediting Agencies. The Criteria are regulations found in 34 CFR Part 602 (for accrediting agencies).

We will also respond to your comments, as appropriate, in the staff analysis we present to the Advisory Committee at its December 2004 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by November 15, 2004. In all instances, your comments regarding the Distance Education and Training Council must relate to the Criteria for Recognition.

#### **What Happens To Comments Received After the Deadline?**

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

#### **Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?**

Subject to the provisions of 5 U.S.C. 522, petitions, interim reports, and those third-party comments received in advance of the meeting, will, upon written request, be made available, by appointment, for inspection and copying at the U.S. Department of Education, 1990 K Street, NW., 7th Floor, Room 7105, Washington, DC 20006-8509, telephone (202) 219-7011 until November 17, 2004. They will be available again after the December 13-15 Advisory Committee meeting.

#### **How May I Obtain Electronic Access to This Document?**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/legislation/FedRegister>.

To use PDF you must have Adobe Acrobat Reader, which is available free

at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gpo/nara/index.html>.

**Authority:** 5 U.S.C. Appendix 2.

Dated: October 7, 2004.

**Sally L. Stroup,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 04-23018 Filed 10-13-04; 8:45 am]

BILLING CODE 4000-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-7827-5]

### California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption for Off-Cycle Emission Test Requirements; Notice of Decision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice regarding waiver of federal preemption.

**SUMMARY:** EPA today, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), is granting California its request for a waiver of federal preemption for its regulations controlling emissions from off-cycle aggressive driving and air-conditioning usage for motor vehicles under 8,501 pounds gross vehicle weight rating. The California Air Resources Board (CARB) requested that EPA grant California a waiver of federal preemption for its regulations which incorporate EPA's two supplemental federal test procedures (SFTP) and associated certification standards.

**ADDRESSES:** The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are available at the EPA's Air and Radiation Docket at EPA's Docket Center. The Docket Center is open from 8:30 to 4:30 p.m. Monday through Friday, at EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The reference number for this docket is OAR-2003-0187.

Electronic copies of this Notice and the accompanying Decision Document

are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Web site (<http://www.epa.gov/OTAQ>). Users can find these documents by accessing the OTAQ Web site and looking at the path entitled, "Chronological List of All OTAQ Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (<http://www.epa.gov/docs/fedrgstr/EPA-AIR>).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

#### FOR FURTHER INFORMATION CONTACT:

David J. Dickinson, Certification and Compliance Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343-9256. E-Mail address: [Dickinson.David@EPA.GOV](mailto:Dickinson.David@EPA.GOV).

**SUPPLEMENTARY INFORMATION:** I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Act for amendments to its motor vehicle pollution control program regarding emissions from off-cycle aggressive driving (US06) and air-conditioning (SC03) as set forth at 13 California Code of Regulations 1960.1, 2062, and 2101 and the incorporated "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," "California New vehicle Compliance Test Procedure," and "California Assembly-Line Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles."

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that its off-cycle aggressive driving and air-conditioning

usage standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. EPA received no comments that questioned CARB's determination. EPA cannot make a finding that CARB's determination, that its requirements are, in the aggregate, at least as protective of public health and welfare, is arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with federal requirements and are, therefore, consistent with section 202(a) of the Act. No information has been presented to demonstrate that CARB's requirements are inconsistent with section 202(a) of the Act, nor does EPA have any other reason to believe that CARB's requirements are inconsistent with section 202(a). Thus, I cannot find that California's requirements will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeal for the District of Columbia Circuit. Petitions for review must be filed by December 13, 2004. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is

exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: September 30, 2004.

**Jeffrey R. Holmstead,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 04-23035 Filed 10-13-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7827-9]

### Science Advisory Board Staff Office; Notification of an Upcoming Meeting of the Ecological Effects Subcommittee of the Advisory Council on Clean Air Compliance Analysis

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Ecological Effects Subcommittee (EES) of the Advisory Council on Clean Air Compliance Analysis (Council). The EES will discuss charge questions related to ecological issues as found in the Office of Air and Radiation's Benefits and Costs of the Clean Air Act, Revised Analytic Plan for EPA's Second Prospective Analysis, 1990-2020.

**DATES:** The public meeting of the Council EES will be held on November 5, 2004 from 9 a.m. to 4 p.m. (Eastern time). The meeting will be held at the SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding the SAB or the Council EES may contact Dr. Holly Stallworth, Designated Federal Officer, at telephone/voice mail: (202) 343-9867 or via e-mail at: [stallworth.holly@epa.gov](mailto:stallworth.holly@epa.gov). General information about the SAB and the meeting location may be found on the SAB Web site at: [www.epa.gov/sab](http://www.epa.gov/sab).

## SUPPLEMENTARY INFORMATION:

### Background

EPA's Office of Air and Radiation (OAR) conducts periodic, scientifically-reviewed studies to assess the costs and benefits of regulations promulgated under the Clean Air Act. The Council is an outside body of recognized experts charged with reviewing the data, methods and cost-benefit analyses conducted by OAR for implementing its programs. The EES is one of the Council's three subcommittees.

EPA has thus far issued one retrospective analysis of the Clean Air Act covering the 1970-1990 time period and one prospective analysis covering the 1990-2010 time period. EPA is planning a second prospective analysis covering the 1990-2020 time period and has issued two analytic blueprints for this analysis. The Council provided advice on these analytic blueprints in 2001 and 2004, but deferred three charge questions pertaining to ecological effects to the EES. The Council's reports may be found at: <http://www.epa.gov/sab/fiscal04.htm>. OAR's "Section 812" reports are posted at: <http://www.epa.gov/air/sect812/index.html>. Additional background on the Council and on the statutorily mandated analyses of the costs and benefits of Clean Air Act programs was provided in a **Federal Register** notice published on February 14, 2003 (68 FR 7531-7534).

The November 5, 2004 meeting will provide the Council EES an opportunity to address the Agency's three charge questions pertaining to ecological issues and Clean Air Act regulations. These three charge questions (numbers 18-20) may be found at: <http://www.epa.gov/air/sect812/812chargequestions-070303finalrevised.pdf>. A meeting agenda will be posted on the SAB Web site prior to the meeting.

### Procedures for Providing Public Comments

It is the policy of the EPA SAB to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at the EES meeting will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Interested parties should contact the DFO in writing (e-mail, fax or mail—see contact information above) by close of business October 29, 2004, in order to

be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. Written Comments: Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least seven business days prior to the meeting date so that the comments may be made available to the panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM-PC/Windows 98/2000/XP format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

### Meeting Accommodations

Individuals requiring special accommodation to access the public meetings listed above should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 7, 2004.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 04-23036 Filed 10-13-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7827-8]

### Science Advisory Board Staff Office; Notification of Advisory Meeting of the Science Advisory Board Illegal Competitive Advantage Economic Benefit Advisory Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Science Advisory Board (SAB) Illegal Competitive Advantage (ICA) Economic Benefit (EB) Advisory Panel will hold a public teleconference to finalize its draft advisory report to the Agency on economic methods related to assessing economic benefits attributed to non-compliance with EPA regulations.

**DATES:** The SAB ICA EB Advisory Panel will meet on November 4, 2004, via

teleconference from 10 a.m. to 12 noon Eastern Standard Time.

**LOCATION:** The public teleconference will take place via teleconference only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes to obtain the teleconference call-in numbers and access codes, would like to submit written or brief oral comments (3 minutes or less), or who wants further information concerning this public teleconference meeting should contact Dr. Jack Kooyoomjian, Designated Federal Officer (DFO), EPA SAB, 1200 Pennsylvania Avenue, NW. (MC 1400F), Washington, DC 20460; via telephone/voice mail: (202) 343-9984; fax: (202) 233-0643; or e-mail at: [kooyoomjian.jack@epa.gov](mailto:kooyoomjian.jack@epa.gov). General information concerning the SAB can be found on the EPA Web site at: <http://www.epa.gov/sab>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the SAB Staff Office hereby gives notice of a public teleconference of the SAB ICA EB Advisory Panel. The Panel has conducted two public teleconference calls and a public meeting to provide advice regarding EPA's Office of Enforcement and Compliance Assurance (OECA) White Paper entitled, "Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs." These public meetings were noticed in the **Federal Register**, 69 Fed. Reg. 35599 (June 25, 2004), and can be found on the SAB Web site at: <http://www.epa.gov/sab>.

##### **Purpose**

The purpose of this public teleconference is to finalize the advisory report.

##### **Availability of Meeting Materials**

Copies of the agenda for the public teleconference described in this notice and the SAB draft advisory report will be posted on the SAB Web site at: <http://www.epa.gov/sab> prior to the teleconference.

##### **Providing Oral or Written Comments at SAB Meetings**

It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments wherever possible. The SAB Staff Office expects the public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral

presentation at a public teleconference meeting will be limited to a total time of three minutes (unless otherwise indicated). Requests to provide oral comments must be *in writing* (e-mail, fax, or mail) and received by the DFO no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the Panelists for their consideration. Comments should be supplied to the DFO (preferably by e-mail) at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 98/2000/XP format)).

##### **Meeting Access**

This is a meeting by teleconference. Individuals requiring special accommodation for this meeting should contact the DFO at least five business days prior to the meeting, so that appropriate arrangements can be made.

Dated: October 7, 2004.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 04-23037 Filed 10-13-04; 8:45 am]

**BILLING CODE 6560-50-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-7827-6]**

##### **Privacy Act of 1974: Revision to an Existing Privacy Act System of Records**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of revised system of records.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Executive Secretariat (OEX) is giving notice that it proposes to publish a revised system of records notice for the Correspondence Management System. This system of records is designed to track, route, and store incoming and outgoing Agency correspondence from and to members of the public, private, and government sectors.

**EFFECTIVE DATES:** The revised notice will be effective November 23, 2004.

**ADDRESSES:** Questions regarding this notice should be addressed to the Director, Office of Executive Secretariat, 1200 Pennsylvania Ave., MC-1105A, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Brian Hope, at (202) 564-7311, or at [hope.brian@epa.gov](mailto:hope.brian@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

The EPA Correspondence Management System is designed to track, route, and store incoming and outgoing Agency correspondence from and to members of the public, private, and governmental sectors. This new system changes only the software used to track information and does not change the types of records that are tracked or alter levels of access to that information. Access to the system is restricted to authorized users (EPA employees and on-site contractors that are cleared to handle such information. All information is maintained in a secure, password protected computer system located in secure areas and buildings with physical access controls and environmental controls. The system is maintained by the Office of Executive Secretariat in the Office of Administrator.

EPA has established an official public docket for this action under Docket ID No. OEI-2004-0003. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets (<http://www.epa.gov/edocket/>). EPA Dockets can be used to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

Dated: October 1, 2004.

**Kimberly T. Nelson,**

*Assistant Administrator and Chief  
Information Officer.*

## **EPA-22**

### **SYSTEM NAME:**

Correspondence Management System.

### **SECURITY CLASSIFICATION:**

None.

### **SYSTEM LOCATION:**

National Computer Center, U.S.  
Environmental Protection Agency Main  
Campus, 109 T.W. Alexander Drive,  
Research Triangle Park, North Carolina  
27709.

### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who write to the U.S.  
Environmental Protection Agency or  
any of its employees in their official  
capacity; all individuals to whom  
correspondence is addressed by EPA or  
any of its employees in their official  
capacity; and individuals whose  
correspondence is referred to EPA by  
the President, the Vice President, or  
another federal agency. (**Note:** Two  
categories of correspondence that will  
not, in most cases, be logged into the  
system are (1) comments to a docket,  
and (2) Freedom of Information and  
Privacy Act requests. The Agency  
maintains separate applications, EPA  
Dockets and FOIAXPress, respectively,  
to log and track such correspondence.)

### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Correspondence generated by anyone  
in the public, private, or government  
sectors and addressed to the U.S.  
Environmental Protection Agency or  
any of its employees in their official  
capacity. Correspondence generated by  
any employee of the U.S. Environmental  
Protection Agency in his or her official  
capacity. Complete records *may* include  
metadata about the correspondence that  
facilitates tracking and record retrieval,  
a scanned image or electronic copy of  
the incoming communication, draft(s) of  
the response document, supporting  
documents or other attachments, and a  
scanned image or electronic copy of the  
outgoing signed response. Pre-  
decisional draft responses will not be  
included as part of the final record.  
Maintenance of physical records is the  
responsibility of each office in  
accordance with the Agency's records  
management guidelines.

### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301.

### **PURPOSE(S):**

To track, route, and store incoming  
and outgoing Agency correspondence  
from and to members of the public,  
private, and governmental sectors.

### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:**

The following General Routine Uses  
of EPA Systems of Records apply to this  
application:

A, B, C, D, E, F, G, H, I, J, K

Records may also be disclosed to a  
federal, state, or local governmental  
agency when it is determined that a  
response by that agency is more  
appropriate than a response by the U.S.  
Environmental Protection Agency.

### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

#### **STORAGE:**

Computer database and paper files  
(until the Agency implements a  
National Archives and Records  
Administration-certified electronic  
records management system).

#### **RETRIEVABILITY:**

All CMS records are full-text indexed  
and are searchable by any data element.

#### **SAFEGUARDS:**

CMS resides on servers located in a  
secure, access-controlled room at the  
EPA National Computer Center at the  
main EPA campus in Research Triangle  
Park, North Carolina. No unauthorized  
individuals may access the physical  
equipment on which the system resides.

Electronic access to CMS is available  
only through the EPA intranet via a  
Single Socket Layer-encrypted  
connection. All users must have a  
password-protected account that defines  
their level of access to data stored in the  
system. Accounts can only be created by  
the System Administrator or Assistant  
System Administrators.

Paper records are maintained in  
lockable file cabinets in secure, access-  
controlled rooms, areas, or buildings.

#### **RETENTION AND DISPOSAL:**

Paper and electronic record copies are  
retained and disposed of according to  
National Archives and Records  
Administration guidelines and the U.S.  
Environmental Protection Agency  
Records Control Schedule.

### **SYSTEM MANAGER(S) AND ADDRESS(ES):**

Director, Office of the Executive  
Secretariat, U.S. Environmental  
Protection Agency, 1200 Pennsylvania  
Avenue, NW., Washington, DC 20460;  
Correspondence Management System  
Administrator, Office of the Executive

Secretariat, 1200 Pennsylvania Avenue,  
NW., Washington, DC 20460.

### **NOTIFICATION PROCEDURE:**

Any individual, or his or her duly  
authorized representative, who (1) is  
desirous of knowing if information of  
any kind about him or her is maintained  
in the Correspondence Management  
System; (2) wishes to access the  
information, if any, maintained about  
him or her in the Correspondence  
Management System; or (3) wants to  
formally contest the contents of a record  
maintained in the Correspondence  
Management System, should make his  
or her request in writing to the System  
Manager(s).

### **RECORD ACCESS PROCEDURES:**

At a minimum, requestors will be  
required to provide adequate  
identification (e.g., driver license,  
military identification card, employee  
badge or identification card) and, if  
necessary, proof of authority. Additional  
identity verification procedures may be  
required as warranted. Copies of records  
that are responsive to the individual's  
request will be mailed or delivered by  
reasonable alternate means, if requested.  
Fees may be incurred if copies are made  
and mailed in accordance with 16.4 of  
current regulations.

### **CONTESTING RECORDS PROCEDURES:**

Individuals requesting correction of or  
amendment to records must reasonably  
and accurately identify the record in  
question, specify the information they  
are contesting, and detail the corrective  
action sought. Complete U.S.  
Environmental Protection Agency  
Privacy Act procedures are set out in 40  
CFR Part 16.

### **RECORD SOURCE CATEGORIES:**

Sources include individuals who  
address correspondence to the Agency  
or any of its employees in their official  
capacities; Agency employees preparing  
responses to incoming correspondence  
or who generate original  
correspondence in their official  
capacities; and the White House and  
other federal agencies (referrals to the  
Agency).

### **SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 04-23033 Filed 10-13-04; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION  
AGENCY**

[FRL-7827-7]

**Forty-Third Street Bay Drum  
Superfund Site; Notice of Settlement****AGENCY:** Environmental Protection  
Agency.**ACTION:** Notice of settlement.

**SUMMARY:** Under section 122(h) (1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has entered into an Agreement for Recovery of Past Cost (Agreement) at the Forty-Third Street Bay Drum Superfund Site (Site) located in Tampa, Hillsborough County, Florida, with twenty-nine (29) parties. EPA will consider public comments on the Agreement until November 15, 2004. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate. Copies of the Agreement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562-8887, [Batchelor.Paula@EPA.GOV](mailto:Batchelor.Paula@EPA.GOV).

Written comment may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: September 24, 2004.

**Rosalind H. Brown,***Chief, Superfund Information & Management  
Branch, Waste Management Division.*

[FR Doc. 04-23034 Filed 10-13-04; 8:45 am]

**BILLING CODE 6560-50-P****EXPORT-IMPORT BANK**

[Public Notice 67]

**Agency Information Collection  
Activities; Comment Request****AGENCY:** Export-Import Bank of the  
United States (Ex-Im Bank).**ACTION:** Notice and request for  
comments.

**SUMMARY:** The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995. The purpose of the survey is to fulfill a statutory mandate (The Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of U.S. exporters and U.S. commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with U.S. exporters.

Accordingly, Ex-Im Bank is requesting that the proposed survey (EIB No. 00-02) be sent to approximately 200 applicants of Ex-Im Bank's medium- and long-term programs. The revised survey is similar to the previous survey, as it asks bankers and exporters to evaluate the competitiveness of Ex-Im Bank's programs vis-à-vis foreign export credit agencies. However, it has been modified in order to account for newer policies and to capture enough information to provide a better analysis of our competitiveness. In addition, the survey will be available on Ex-Im Bank's Web site, <http://www.exim.gov>, with

recipients encouraged to respond online as well.

**DATES:** Written comments should be received on or before December 13, 2004 to be assured of consideration.

**ADDRESSES:** Direct all requests for additional information to Alan Jensen, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Room 1279, Washington, DC 20571, (202) 565-3767.

**SUPPLEMENTARY INFORMATION:** With respect to the proposed collection of information, Ex-Im Bank invites comments as to:

- Whether the proposed collection of information is necessary for the proper performance of the functions of Ex-Im Bank, including whether the information will have a practical use;
- The accuracy of Ex-Im Bank's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

*Title & Form Number:* 2004 Exporter & Banker Survey of Ex-Im Bank Competitiveness, EIB Form 00-02.

*OMB Number:* 3048-0004.

*Type of Review:* Revision of a currently approved collection.

*Annual Number of Respondents:* 200.

*Annual Burden Hours:* 200.

*Frequency of Reporting or Use:* Annual Survey.

Dated: October 7, 2004.

**Solomon Bush,***Agency Clearance Officer.***BILLING CODE 6690-01-M**

OMB #3048-0004

**PART 1 – EXPORTER/BANKER COMPANY PROFILE**

*[Note: See “Part 1 Attachment” for answer choices to questions 1-5 below.]*

Years in Business  Years in Exporting/Trade Finance

Have you used Ex-Im Bank’s medium-term or long-term program in the previous calendar year? ☐ YES ☐ NO

How many applications did your organization file with Ex-Im Bank in 2004?

Which medium/long-term programs did you use? Check all that apply:

- ☐ Medium-term Insurance
- ☐ Medium-term Guarantee
- ☐ Long-term Guarantee
- ☐ Medium-term Loan
- ☐ Long-term Loan

Compared to 2003, my 2004 volume of exports/trade finance was:

- ☐ Higher
- ☐ Same
- ☐ Lower

**EXPORTERS**

2004 total sales volume  1. 2004 total U.S. export sales volume  2.

% of total export sales volume that was Ex-Im Bank supported  3.

**BANKERS**

2004 total export credit extended with a term over one year  4.

% of 2004 total export credit extended with a term over one year that was Ex-Im Bank supported

5.

OMB #3048-0004

**PART 2—EXPERIENCE WITH FOREIGN EXPORT CREDIT AGENCIES (ECAs)**

*[Note: See "Part 2 Attachment" for the possible answer choices to the questions below.]*

Please indicate your experience in the previous calendar year in using, receiving support from or working with other official ECAs. Please select the appropriate answer for each ECA listed.

Canada (EDC)	<input type="text"/>	Japan (NEXI)	<input type="text"/>
France (Coface)	<input type="text"/>	UK (ECGD)	<input type="text"/>
Germany (Hermes)	<input type="text"/>	Other (identify)	<input type="text"/>
Italy (SACE)	<input type="text"/>	Other (identify)	<input type="text"/>
Japan (JBIC)	<input type="text"/>	Other (identify)	<input type="text"/>

Please indicate your experience in the previous calendar year in facing competitors that received support from foreign official ECAs. Please select the appropriate answer for each ECA listed.

Canada (EDC)	<input type="text"/>	Japan (NEXI)	<input type="text"/>
France (Coface)	<input type="text"/>	UK (ECGD)	<input type="text"/>
Germany (Hermes)	<input type="text"/>	Other (identify)	<input type="text"/>
Italy (SACE)	<input type="text"/>	Other (identify)	<input type="text"/>
Japan (JBIC)	<input type="text"/>	Other (identify)	<input type="text"/>

**PART 2 (Continued)**

Why do you approach Ex-Im Bank for support? Please indicate the approximate frequency with which each of the following challenges or needs arise, as well as a typical region or situation that presents such a challenge/need.

*[Note: When the survey is being completed on-line, if the cursor is placed over the question further explanation of that question will "pop up." The more detailed explanations are found in the "Part 2 Attachment."]*

2.	Challenge/Need	%	Typical Region or Situation
	Face competition from companies that receive ECA support:	<hr/>	<hr/>
	Find a lack of useful private market financing available:	<hr/>	<hr/>
	Need continuing U.S. government involvement:	<hr/>	<hr/>
	Other (Please identify):	<hr/>	<hr/>
	Other (Please identify):	<hr/>	<hr/>

OMB #3048-0004

**PART 3 – EXPERIENCE WITH EX-IM BANK AS COMPARED TO FOREIGN ECAs**

Using the guide below, please grade Ex-Im Bank as it compares to other ECAs in the following categories:

*[Note: When the survey is being completed on-line, if the cursor is placed over an element in which Ex-Im Bank is to be graded then the definition of that element will “pop up.” The definitions for each of the elements are found in the “Part 3 Attachment.”]*

<b>A+</b>	= Fully competitive. Consistently equal to the (or is the sole) ECA offering the most competitive position on this element. Levels the playing field on this element with the most competitive offer from any of the major ECAs.
<b>A</b>	= Generally competitive. Consistently offers terms on this element equal to the average terms of the typical major ECA. Levels the playing field on this element with the typical offer from the major ECAs.
<b>A-/B+</b>	= In between A and B
<b>B</b>	= Modestly competitive. Consistently offers terms on this element equal to the least competitive of the major ECAs. Does not quite level the playing field on this element with most of the major ECAs.
<b>B-/C+</b>	= In between B and C
<b>C</b>	= Barely competitive. Consistently offers terms on this element that are a notch below those offered by any of the major ECAs. Puts exporter at financing disadvantage on this element that may, to a certain extent, be compensated for in other elements or by exporter concessions.
<b>C-/D+</b>	= In between C and D
<b>D</b>	= Uncompetitive. Consistently offers terms on this element that are far below those offered by other major ECAs. Puts exporter at financing disadvantage on this element so significant that it is difficult to compensate for and may be enough to lose a deal.
<b>F</b>	= Does not provide program or element

**CORE BUSINESS POLICIES AND PRACTICES****Ex-Im Bank's Cover Policy**

Scope of country risk

Depth of non-sovereign risk

Breadth of availability (e.g., restrictions)

**Interest Rate Provided by Ex-Im Bank**

Loans (CIRR)

Insurance cover

Guarantee cover

**Ex-Im Bank's Risk Premia on**

Sovereign

Non-sovereign

**Ex-Im Bank's Co-financing**

# and utility of bilateral agreements

Flexibility in one-off deals

OMB #3048-0004

**PART 3 (Continued)**

Do you have any comments on Ex-Im Bank's **cover policy, interest rates, risk premia or co-financing** as they compare to those offered by other ECAs? For example, what core business policies and practices, if changed, would impact your competitiveness? **Please be as specific as possible.**

**MAJOR PROGRAMS AND PERFORMANCE** (Please complete each of the sections **only** if you have experience with the program.)

**Ex-Im Bank's Medium-Term Program**

Pricing

% of cover

Risk capacity

**Ex-Im Bank's Long-Term Program**

Pricing

% of cover

Risk capacity

**Ex-Im Bank's Large Aircraft Program**

Interest rate

% of cover

Risk capacity

**Ex-Im Bank's Project Finance**

Core program features

Repayment flexibilities

**Ex-Im Bank's Foreign Currency Guarantee**

Availability of hard currency cover

Availability of local currency cover

Pricing

**Ex-Im Bank's Support for Service Exports**

Availability

Repayment terms

Do you have any comments on Ex-Im Bank's programs for **medium- and long-term financing, large aircraft, project finance, or foreign currency guarantees** as compared to those of other ECAs? Do you have any comments on the support Ex-Im Bank offers for services exports as compared to that offered by other ECAs? What programs or performance, if changed, would impact your competitiveness? **Please be as specific as possible.**

OMB #3048-0004

**PART 3 (Continued)**

Using the guide below, please indicate the competitive impact of the following economic philosophies and public policies on Ex-Im Bank's support.

+	Positive	Philosophy, policy or program has a positive impact on Ex-Im Bank's competitiveness (moves Ex-Im Bank's competitiveness grade up one notch)
*	Neutral	Philosophy, policy or program has a neutral impact on Ex-Im Bank's competitiveness (no impact on Ex-Im Bank's competitiveness grade)
-	Negative	Philosophy, policy or program has a negative impact on Ex-Im Bank's competitiveness (moves Ex-Im Bank's competitiveness grade down one notch)

**ECONOMIC PHILOSOPHY** (Please complete each of the sections **only** if you have experience with the program.)

Tied aid

Market windows

Do you have any comments on Ex-Im Bank's competitiveness with regard to **tied aid** or **market windows**? For example, have you seen competition supported by market windows or tied aid financing? **Please be as specific as possible.** You may also provide case specific data in Part 4.

OMB #3048-0004

**PART 3 (Continued)**

**PUBLIC POLICIES** (Please complete each of the sections **only** if you have experience with the program.)

Economic impact	<input type="text"/>	Foreign content	<input type="text"/>	Local costs	<input type="text"/>
PR 17/Shipping	<input type="text"/>	Environment	<input type="text"/>		

Do you have any comments on Ex-Im Bank's policies as they compare with other ECAs concerning **economic impact, foreign content, local costs, shipping** or the **environment**? Where other ECAs do not have a comparable public policy, such as economic impact and shipping, do you have comments on the impact of these public policies to Ex-Im Bank's competitiveness? For example, what public policies, if changed, would impact your competitiveness? **Please be as specific as possible.**

**COMPETITIVENESS WEIGHTING**

Now that you have graded Ex-Im Bank in several areas, please weight the overall importance of each of the four broad categories listed above to Ex-Im Bank's overall competitiveness. Please ensure that the sum of your weights equals 100%.

Core Business Policies and Practices	[0 – 100%]
Major Programs and Performance	[0 – 100%]
Economic Philosophy	[0 – 100%]
Public Policies	[0 – 100%]

*[Note: The online survey will ensure that the sum of the four percentage weightings equals 100%.]*

OMB #3048-0004

**PART 4 – EX-IM BANK PROJECTS**

This template is provided as an opportunity for you to flesh out some of the grades that you gave in Part 3 by detailing any adverse impacts of Ex-Im Bank program features in specific transactions.

	<u>Cost/Policy/ Program</u>	<u>ECA</u>	<u>Market</u>	<u>Project Description</u>	<u>Describe the competition you faced and the effect that it had on your business (eg forced to change sourcing; lost jobs; lower exports). If possible, please quantify.</u>
<b>Ex.</b>	Cover	EDC	Iran	Power Plant	As a result of Ex-Im Bank's lack of cover for Iran, we were forced to source from outside the U.S. This resulted in a loss of over \$100 million in U.S. export sales.
1					
2					
3					
4					
5					

OMB #3048-0004

**PART 5 – GENERAL COMMENTS**

This space is provided for you to express your views on the general competitive environment, trends of specific competitors, etc. You may also use this space to comment on aspects of Ex-Im Bank programs, particularly those not addressed in the above questions.

--

**PART 1 ATTACHMENT****Dropdown answers:**

1) 2003 total sales volume:

- ☐ <\$10 million
- ☐ \$10 - \$50 million
- ☐ \$51 - 100 million
- ☐ \$101 - \$500 million
- ☐ \$501 million - \$1 billion
- ☐ >\$1 billion

2) 2003 total U.S. export sales volume:

- ☐ <\$10 million
- ☐ \$10 - \$50 million
- ☐ \$51 - 100 million
- ☐ \$101 - \$500 million
- ☐ \$501 million - \$1 billion
- ☐ >\$1 billion

3) % of total export sales volume that was Ex-Im Bank supported:

- ☐ <10%
- ☐ 10% - 25%
- ☐ 26% - 50%
- ☐ 51% - 75%
- ☐ >75%

4) 2003 total export credit extended with a term over one year:

- ☐ <\$10 million
- ☐ \$10 - \$50 million
- ☐ \$51 - 100 million
- ☐ \$101 - \$500 million
- ☐ \$501 million - \$1 billion
- ☐ >\$1 billion

5) % of 2003 total export credit extended with a term over one year that was Ex-Im Bank supported:

- ☐ <10%
- ☐ 10% - 25%
- ☐ 26% - 50%
- ☐ 51% - 75%
- ☐ >75%

**PART 2 ATTACHMENT****1) Dropdown answers:**

Experience with foreign ECAs (receiving support from or facing competitors supported by):

- ☐ Frequent
- ☐ Regular
- ☐ Rare
- ☐ None

**2) Pop-up definitions:**

Part/Section	Term/Phrase	Definition
Part 2, Challenge/Need	Face competition from companies that receive ECA support	
	Find a lack of useful private market financing available	Private market financing is either unavailable for the term or market or is so expensive as to be prohibitive
	Need continuing U.S. government involvement	For example, in certain transactions, a long-term presence of the U.S. government is a useful transactional security blanket, even if not financially necessary to fund the transaction

**PART 3 ATTACHMENT****1) Grades definition:**

A+	Fully competitive	Consistently equal to the (or is the sole) ECA offering the most competitive position on this element. Levels the playing field on this element with the most competitive offer from any of the major ECAs.
A	Generally competitive	Consistently offers terms on this element equal to the average terms of the typical major ECA. Levels the playing field on this element with the typical offer from the major ECAs.
A-/B+		In between A and B.
B	Modestly competitive	Consistently offers terms on this element equal to the least competitive of the major ECAs. Does not quite level the playing field on this element with most of the major ECAs.
B-/C+		In between B and C.
C	Barely competitive	Consistently offers terms on this element that are a notch below those offered by any of the major ECAs. Puts exporter at financing disadvantage on this element that may, to a certain extent, be compensated for in other elements or by exporter concessions.
C-/D+		In between C and D.
D	Uncompetitive	Consistently offers terms on this element that are far below those offered by other major ECAs. Puts exporter at <u>financing disadvantage on this element</u> so significant that it is difficult to compensate for and may be enough to lose a deal.
F	Does not provide program or element	

**Pop-up definitions:**

Part/Section	Term/Phrase	Definition
Part 3, Core Business Policies and Practices	Ex-Im Bank's Cover Policy	Please compare the following elements of Ex-Im Bank's willingness to cover political and commercial risks in a particular country against other ECAs' cover policies
	Scope of country risk	The number and utility of countries where cover is available

Part/Section	Term/Phrase	Definition
	Depth of non-sovereign risk	The number, variety and utility of cover available for private buyers
	Breadth of availability	The number and utility of markets where cover is not restricted by amount or term
	Interest Rates Provided by Ex-Im Bank	Please compare the interest rates available under Ex-Im Bank programs (including those offered by the private sector lenders who benefit from Ex-Im's guarantee or insurance) to those available from other ECAs
	Loans (CIRR)	The official fixed Commercial Interest Reference Rate offered under Ex-Im Bank's direct loan program
	Insurance Cover	The interest rates offered by banks using Ex-Im Bank's medium-term insurance program
	Guarantee Cover	The interest rates offered by banks using Ex-Im Bank's guarantee program
	Ex-Im Bank's Risk Premia on:	Please compare the following types of exposure or risk fee charged by Ex-Im Bank to the fees charged by other ECAs
	Sovereign	The exposure fee charged by Ex-Im Bank for transactions to sovereign buyers or guaranteed by sovereign entities
	Non-sovereign	The exposure fee charged by Ex-Im Bank for transactions to public non-sovereign or private sector buyers
Part 3, Major Programs and Performance	Ex-Im Bank's Large Aircraft Program	Please compare the following elements of Ex-Im Bank's large aircraft program to the aircraft programs of other ECAs

Part/Section	Term/Phrase	Definition
	Fixed interest rate level	The interest rates available under Ex-Im Bank's aircraft program
	Percentage of cover	The percentage of the transaction value underwritten by Ex-Im Bank
	Risk capacity	Ex-Im Bank's ability to take on a variety of risks in its aircraft program
	Ex-Im Bank' Project Finance	Please compare the following elements of Ex-Im Bank's project finance program to those of other ECAs' programs
	Core program features	Availability of coverage for pre- and post-completion risks, interest during construction, local costs support
	Repayment flexibilities	Willingness and ability to use available OECD repayment flexibilities
	Ex-Im Bank's Co-financing	Please compare the following elements of Ex-Im Bank's co-financing program to those of other ECAs' co-financing programs
	# and utility of bilateral agreements	Availability and utility of co-financing framework agreements between Ex-Im Bank and another ECA
	Flexibility in one-off deals	Availability and willingness to do one-time co-financing transactions without a bilateral framework agreement
	Ex-Im Bank's Foreign Currency Guarantees	Please compare Ex-Im Bank's ability to guarantee loans denominated in foreign currencies compared to that of other ECAs

Part/Section	Term/Phrase	Definition
	Availability of hard currency cover	Availability of cover for freely convertible and readily available currencies of developed countries, such as the Japanese yen, the Euro, and the Swiss franc.
	Availability of local currency cover	Availability of cover for the currencies of the buyer, typically located in emerging market countries, such as the Mexican peso, South African rand, and Indian rupee.
	Pricing	The exposure fee charged by Ex-Im Bank under its foreign/local currency guarantee program
	Ex-Im Bank's Support for Services Exports	Please compare the following elements of Ex-Im Bank's support for services (intangible exports such as engineering and design services) to the support provided by other ECAs
	Availability	How easy it is to attain medium- or long-term Ex-Im Bank support for services exports (on a stand-alone basis, i.e., without being bundled with exports of goods)
	Repayment terms	The repayment terms Ex-Im Bank offers for services exports

**Competitive Impact Definition**

+	Positive	Philosophy, policy or program has a positive impact on Ex-Im Bank's competitiveness (moves Ex-Im Bank's competitiveness grade up one notch)
*	Neutral	Philosophy, policy or program has a positive impact on Ex-Im Bank's competitiveness (no impact on Ex-Im Bank's competitiveness grade)
-	Negative	Philosophy, policy or program has a positive impact on Ex-Im Bank's competitiveness (moves Ex-Im Bank's competitiveness grade down one notch)

Part 3, Economic Philosophy	Tied Aid	The offer of concessional credits to buyer countries in return for the purchase of U.S. goods.
	Market windows	Ex-Im Bank's response to the provision of export credits on "market terms" by a government ECA or government-supported financial institution.
Part 3, Public Policies	Economic Impact	The requirement to assess whether Ex-Im Bank financing of a particular export will cause substantial injury to U.S. industry or result in the production of a good that is subject to a trade measure.
	Foreign content	Inclusion of eligible content that originated outside the U.S. and the buyer's country in a U.S. supply contract.
	Local costs	Support for export-related costs that are incurred in the buyer's country.
	PR 17/Shipping	The requirement that exports support by Ex-Im Bank's medium- and long-term loans and long-term guarantees be shipped on U.S. flag vessels.
	Environment	Environmental review procedures, policies and requirements.

[FR Doc. 04-22976 Filed 10-13-04; 8:45 am]

BILLING CODE 6690-01-C

**FEDERAL COMMUNICATIONS  
COMMISSION****Sunshine Act Meeting**

October 7, 2004.

The Federal Communications  
Commission will hold an Open Meetingon the subjects listed below on  
Thursday, October 14, 2004, which is  
scheduled to commence at 9:30 a.m. in  
Room TW-C305, at 445 12th Street,  
SW., Washington, DC.

Item No.	Bureau	Subject
1	Office of Engineering and Technology .....	<i>Title:</i> Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems (ET Docket No. 04-37) and Carrier Current Systems, including Broadband over Power Line Systems (ET Docket No. 03-104). <i>Summary:</i> The Commission will consider a Report and Order regarding changes to the rules applicable to Access Broadband over Power Line systems.
2	Office of Engineering and Technology .....	<i>Title:</i> Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems (ET Docket No. 00-258) and Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands (WT Docket No. 02-8). <i>Summary:</i> The Commission will consider a Seventh Report and Order concerning the relocation of existing Federal Government users from the band 1710-1755 MHz in order to make that band available for Advanced Wireless Services.
3	International .....	<i>Title:</i> The Effect of Foreign Mobile Termination Rates on U.S. Customers (IB Docket No. 02-324 and 96-261). <i>Summary:</i> The Commission will consider a Notice of Inquiry concerning the possible effects of foreign mobile termination rates on U.S. customers and competition in the U.S. telecommunications services market.
4	Wireline Competition .....	<i>Title:</i> Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98); and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147). <i>Summary:</i> The Commission will consider an Order on Reconsideration concerning requests from BellSouth and SureWest to reconsider and/or clarify various broadband unbundling obligations.
5	Wireline Competition .....	<i>Title:</i> The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-128). <i>Summary:</i> The Commission will consider an Order on Reconsideration concerning its payphone compensation rules.
6	Wireline Competition .....	<i>Title:</i> Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana, Pursuant to Section 251(h)(2) (WC Docket No. 02-78). <i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking concerning section 251(h)(2) of the Communications Act of 1934, as amended.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418-0500; TTY 1 (888) 835-5322. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at [www.fcc.gov/realaudio](http://www.fcc.gov/realaudio).

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993-3100 or go to [www.capitolconnection.gmu.edu](http://www.capitolconnection.gmu.edu). Audio and video tapes of this meeting can be purchased from CACI Productions, 14151 Park Meadow Drive, Chantilly, VA 20151, (703) 679-3851.

Copies of materials adopted at this meeting can be purchased from the

FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488-5300; Fax (202) 488-5563; TTY (202) 488-5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Best Copy and Printing, Inc. may be reached by e-mail at [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

[FR Doc. 04-23189 Filed 10-12-04; 2:15 pm]

BILLING CODE 6712-01-P

**FEDERAL ELECTION COMMISSION****Sunshine Act Notice**

\* \* \* \* \*

**DATE AND TIME:** Tuesday, October 19, 2004 at 10 a.m.**PLACE:** 999 E Street NW., Washington, DC**STATUS:** This meeting will be closed to the public.**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

\* \* \* \* \*

**DATE AND TIME:** Thursday, October 21, 2004 at 10 a.m.**PLACE:** 999 E Street NW., Washington, DC (Ninth floor).

**STATUS:** This meeting will be opened to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.  
Advisory Opinion 2004–34: The Libertarian Party of Virginia by Kevin McKenna, Treasurer.  
Advisory Opinion 2004–37: Representative Maxine Waters by counsel, Joseph M. Birkenstock.  
Explanation and Justification for Political Committee Rulemaking.  
Candidate Debates—Notice of Disposition of Petition for Rulemaking.  
Routine Administrative Matters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Biersack, Acting Press Officer, Telephone (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 04–23193 Filed 10–12–04; 3:16 pm]

**BILLING CODE 6715–01–M**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov). Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011409–011.

*Title:* Transpacific Carrier Services, Inc. Agreement.

*Parties:* Westbound Transpacific Stabilization Agreement, Transpacific Space Utilization Agreement, Asia North America Eastbound Rate Agreement, Transpacific Stabilization Agreement and their constituent member lines: American President Lines, Ltd./APL Co. Pte. Ltd.; Evergreen Marine Corporation; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Yang Ming Marine Transport Corp.; COSCO Container Lines Co., Ltd.; CMA CGM, S.A.; and China Shipping Container Lines Co., Ltd.

*Filing Party:* David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment deletes A.P. Moller-Maersk A/S as a party to the agreement.

*Agreement No.:* 011546–002.

*Title:* WWL/NYK Space Charter Agreement.

*Parties:* Wallenius Wilhelmsen Lines AS and Nippon Yusen Kaisha.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment adds the United States West Coast to the geographic scope.

*Agreement No.:* 011852–012.

*Title:* Maritime Security Discussion Agreement.

*Parties:* Australia-New Zealand Direct Line; China Shipping Container Lines, Co., Ltd.; Canada Maritime; CMA CGM, S.A.; Contship Container Lines; COSCO Container Lines Company, Ltd.; CP Ships (UK) Limited; Evergreen Marine Corp.; Hanjin Shipping Company, Ltd.; Hapag Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Italia di Navigazione, LLC; Kawasaki Kisen Kaisha Ltd.; Lykes Lines Limited, LLC; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd Limited; TMM Lines Limited, LLC; Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Eagle Marine Services Ltd.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority; Metropolitan Stevedore Co.; P&O Ports North American, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Universal Maritime Service Corp.; Virginia International Terminals; and Yusen Terminals, Inc.

*Filing Parties:* Carol N. Lambos; Lambos & Junge; 29 Broadway, 9th Floor; New York, NY 10006 and Charles T. Carroll, Jr.; Carroll & Froelich, PLLC; 2011 Pennsylvania Avenue, NW., Suite 301; Washington, DC 20006.

*Synopsis:* The amendment revises Zim's corporate name.

*Agreement No.:* 011882–001.

*Title:* Zim/COSCON Slot Charter Agreement.

*Parties:* Cosco Container Lines Co. Ltd. and Zim Integrated Shipping Services, Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment revises Zim's corporate name.

*Agreement No.:* 011887–001.

*Title:* Zim/CCNI Space Charter Agreement.

*Parties:* Zim Integrated Shipping Services, Ltd. and Compania Chilena de Navegacion InterOceanica.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment revises Zim's corporate name.

*By Order of the Federal Maritime Commission.*

Dated: October 8, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–23051 Filed 10–13–04; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR, part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

### Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Longyun Worldwide Forwarding Co. Ltd., No. 66, Weixing Xincun, Laogang Town, Nanhui District, Shanghai, China 201302. *Officers:* Weifen Yuan, President Qualifying Individual), Jun Sun, Director.

Global Alliance Logistics (ATL) Inc., 510 Plaza Drive, Suite 2720, College Park, GA 30349. *Officers:* Philip Yu, Vice President Qualifying Individual), Kam L. Ng, President.

### Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Willmar International, Inc., 975 Navajo Drive—P.O. Box 87, Bluffton, OH 45817. *Officer:* William T. Martin, President (Qualifying Individual).

Pacific Hong International Corp., dba Charming Shipping Company, 308 La France Avenue, #F, Alhambra, CA 91801. *Officers:* Honghua Wang, President (Qualifying Individual), Hongyu Zhang, CFO.

### Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Reaction, Inc., 1549 Taft Court, Seaford, NY 11873. *Officers:* Ahmet Celikay, President (Qualifying Individual).

Dated: October 8, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04-23052 Filed 10-13-04; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 27, 2004.

**A. Federal Reserve Bank of Minneapolis** (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. **Todd L. Johnson**, Superior, Wisconsin; to acquire voting shares of NATCOM Bancshares, Inc., Superior, Wisconsin, and thereby indirectly acquire voting shares of National Bank of Commerce, Superior, Wisconsin.

Board of Governors of the Federal Reserve System, October 7, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04-22975 Filed 10-13-04; 8:45 am]

**BILLING CODE 6210-01-S**

## GOVERNMENT ACCOUNTABILITY OFFICE

### Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, November 8, 2004, from 8:30 a.m. to 5 p.m., in room 7C13 of the Government Accountability Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. The meeting is open to the public. Council discussions and reviews are open to the public. Members of the public will be provided an opportunity to address the Council with a brief (five minute) presentation on Monday afternoon.

Any interested person who plans to attend the meeting as an observer must contact Sharon Chase, Council Assistant, 202-512-6428. A form of picture identification must be presented to the GAO Security Desk on the day of the meeting to obtain access to the GAO Building. For further information, please contact Ms. Chase. Please check the Government Auditing Standards Web page (<http://www.gao.gov/govaud/ybk01.htm>) one week prior to the meeting for a final agenda.

**Jeanette M. Franzel,**

*Director, Financial Management and Assurance.*

[FR Doc. 04-22983 Filed 10-13-04; 8:45 am]

**BILLING CODE 1610-02-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. 2004S-0233]

### Stimulating Innovation in Medical Technologies; Public Meeting

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Department of Health and Human Services (HHS) is announcing a public meeting to weigh new ideas and promote new solutions to encourage innovation in health care and to speed the development of effective new medical technologies, such as drug and

biological products and medical devices. A high level task force has been formed within HHS and is charged with issuing a report this year on appropriate steps that can be taken across HHS to speed the development and availability of new medical technologies. The purpose of this public meeting is to obtain input from interested persons on what steps HHS can take to create or enhance coordination across HHS agencies in order to stimulate the development of new technologies. HHS will consider presentations made at the public meeting and comments submitted to the docket before and after the meeting when developing the report.

**Dates:** The public meeting will be held on Monday, November 8, 2004, from 9:30 a.m. to 4 p.m. Submit electronic requests to speak by October 29, 2004 (see *Registration and Request for Presentations*). Submit written or electronic comments by November 15, 2004, to the Division of Dockets Management (see *Addresses*).

**Location:** The public meeting will be held at the Hubert H. Humphrey Building, rm. 800, 200 Independence Ave. SW., Washington, DC 20201.

**Addresses:** Submit written comments concerning this document to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Follow the instructions for submitting comments.

**Contact:** Nancy Stanisic, Food and Drug Administration, rm. 9-64, 5600 Fishers Lane, Rockville, MD 20852, 301-827-1660, FAX: 301-443-9718, e-mail: [stanisicn@cder.fda.gov](mailto:stanisicn@cder.fda.gov), or Tom Kuchenberg, Office of the Secretary, Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201, 202-205-8644.

**Registration and Request for Presentations:** Send registration information and requests to speak electronically (including name, title, firm name, address, telephone, fax number, and presentation abstract, as well as requests to make oral presentations and approximate amount of time requested to make the presentation, to Nancy Stanisic (see *Contact*) by October 29, 2004. Registration is required to attend the meeting. Seating is limited to 120 people. If you need special accommodations due to a disability, please contact Nancy Stanisic by October 29, 2004.

**Transcripts:** Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug

Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. Transcripts of the public meeting will also be available for review at the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

During the past decade, an increased awareness of medical technology innovation and its promise and progress has revealed critical problems in the path from discovery through development to delivery. This spring, Secretary of Health and Human Services Tommy G. Thompson appointed a top-level task force to present new ideas on how HHS can coordinate its efforts to help stimulate medical innovation. The task force members include: Centers for Disease Control and Prevention, Director, Julie Gerberding; Centers for Medicare and Medicaid, Administrator, Mark B. McClellan; Acting Commissioner of Food and Drugs, Lester M. Crawford; and National Institutes of Health, Director, Elias A. Zerhouni. Commissioner Crawford will serve as the task force's Chair.

Secretary Thompson asked the task force to look for opportunities across HHS to promote speedier access to new innovative medical technologies that can improve people's health and save lives. He asked the task force to report to him by the end of the year on ways that better coordination across HHS could streamline the way we do business and make safe, effective medical technologies more quickly and readily available to Americans.

On May 24, 2004, a **Federal Register** notice (69 FR 29544) was published asking for comments on how to stimulate innovation in medical technologies, such as drug and biological products and medical devices.

Comments have been received and are being evaluated and condensed into material suitable for a report. On November 8, 2004, we will not only focus on opportunities presented at the public meeting, but those promising ideas that HHS has already received and plans to highlight. The ideas will be posted 1 week before the public meeting in the electronic docket (Docket No. 2004S-0233) located at <http://www.fda.gov/ohrms/dockets/dockets/04S-0233.htm>.

##### II. Registration and Presentations

Registration is required to attend the meeting. Seating is limited to 120 people and will be on a first come, first served basis. If you need special accommodations due to a disability, please inform Nancy L. Stanicic by October 29, 2004.

If you wish to present information at the public meeting, submit your electronic request and an abstract of your presentation by close of business on October 29, 2004, to Nancy Stanicic (see *Contact*).

The request to participate should contain the following information: (1) Presenter's name; (2) address; (3) telephone number; (4) e-mail address; (5) affiliation, if any; (6) abstract of the presentation; and (7) approximate amount of time requested for the presentation.

We request that persons and groups having similar interests consolidate their comments and present them through a single representative. We will allocate the time available for the meeting among the persons who request to present. Because of limited time, we will accept only one presenter per organization. We reserve the right to deny requests if the proposed topic is not germane. After reviewing the requests to present and the abstracts, we will schedule each appearance and notify each participant by e-mail or telephone of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. Presenters planning to use electronic presentation in Microsoft PowerPoint, Microsoft Word, or Adobe Acrobat (pdf) must send them to us by close of business on November 4, 2004. Presenters who do not meet this deadline may provide handouts of their presentations at the meeting.

After the meeting, the schedule and presentations will be placed on file in the Division of Dockets Management (see *Addresses*) under the docket number listed in the heading of this document.

##### III. Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see *Addresses*). You must submit two copies of comments identified with the docket number found in brackets in the heading of this document. The received comments may be seen in the Division of Dockets Management Monday through Friday, between 9 a.m. and 4 p.m.

##### IV. Transcript

Approximately 30 days after the public meeting, you can examine a transcript of the meeting on the Internet at <http://www.fda.gov/ohrms/dockets/default.htm> or at the Division of Dockets Management (see *Addresses*) Monday through Friday, between 9 a.m. and 4 p.m. You may also request a copy of the transcript from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, at a cost of 10 cents per page or on CD at a cost of \$14.25 each.

Dated: October 8, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04-23064 Filed 10-8-04; 2:23 pm]

BILLING CODE 4160-01-S

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Centers for Disease Control and Prevention

[30Day-04-0415X]

##### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

##### Proposed Project

Surveillance for Ciguatera Fish Poisoning in Recreational Fishers Utilizing Texas Gulf Coast Oil Rigs—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

This public health surveillance activity will quantify the scope of ciguatera poisonings in the recreational fishing community of coastal Texas. The Texas Department of Health has received reports of ciguatera-toxic fish caught around Texas offshore oil rigs, but anecdotal reports to researchers at the University of Texas suggest that the incidence of ciguatera fish poisoning is

greater than what has been reported to the Texas Department of Health. We propose to conduct surveillance activities to identify the prevalence of ciguatera fish poisoning around Texas Gulf Coast oil rigs. This study will

provide critical data in guiding efforts to characterize the scope of ciguatera poisonings, to identify risk factors, and to prevent an emerging illness associated with reef ecosystems.

A questionnaire will be administered over a one-year period to recreational

spear-fishers and to hook-and-line anglers who have consumed fish caught on the reef ecosystems off the Texas Gulf Coast. There are no costs to respondents. The annualized burden is estimated to be 230 hours.

Respondent	No. of respondents	No. of responses/ respondent	Average burden per response (in hours)
Screening study participants .....	750	1	5/60
Texas Saltwater Fishers .....	500	1	20/60

Dated: October 7, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23023 Filed 10-13-04; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30 Day-04-0215]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C.

Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

#### Proposed Project

Application Form and Related Forms for the Operation of the National Death Index, (0920-0215)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

#### Background

The National Death Index (NDI) is a national data base containing identifying death record information submitted annually to NCHS by all the state vital statistics offices, beginning

with deaths in 1979. Searches against the NDI file provide the states with dates of death, and the death certificate numbers of deceased study subjects. Since the implementation of the NDI Plus service, researchers have the option of also receiving cause of death information for deceased subjects, thus reducing the need to request copies of death certificates from the states. The NDI Plus option currently provides the ICD codes for the underlying and multiple causes of death for the years 1979-2002. Health researchers must complete five administrative forms in order to apply for NDI services, and submit records of study subjects for computer matching against the NDI file. While there are five forms, it is rare for an NDI user to complete more than one of each per year; therefore, the burden table addresses respondents and not forms. There are no costs to respondents except for their time. The estimated annualized burden is 228 hours.

Respondents	No. of respondents	No. of responses per respondents	Average burden per response (in hrs.)
Government researchers .....	48	1	1.9
University researchers .....	60	1	1.9
Private industry researchers .....	12	1	1.9

Dated: October 6, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23024 Filed 10-13-04; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Centers for Construction Safety and Health, Request for Applications (RFA) OH-04-002

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Centers for Construction Safety and Health, Request for Applications (RFA) OH-04-002.

*Times and Dates:* 6 p.m.-6:30 p.m., November 15, 2004 (open). 6:30 p.m.-8 p.m., November 15, 2004 (closed). 8 a.m.-5 p.m., November 16 2004 (closed).

*Place:* Embassy Suites Hotels, 1900 Diagonal Road, Alexandria, VA 23114, phone 703-684-5900.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of

the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

**Matters to be Discussed:** The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications OH-04-002.

**Contact Person for More Information:** S. Price Connor, Ph.D., Research Grants Program Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., MS-E74, Atlanta, GA. 30333, Telephone 404-498-2530.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 6, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 04-23022 Filed 10-13-04; 8:45 am]

**BILLING CODE 4163-19-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Health and Safety Research, Program Announcement (PA) 04038

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

**Name:** Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Health and Safety Research, Program Announcement (PA) 04038.

**Times and Dates:** 2:30 p.m.-2:45 p.m., November 1, 2004 (open).

2:45 p.m.-5:30 p.m., November 1, 2004 (closed).

**Place:** Office of Extramural Programs, Room 1419, Building 24, Executive Park Drive, Atlanta, GA 30333, Telephone: 888-414-5419 Pass Code 18205 (this meeting will be held via teleconference).

**Status:** Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

**Matters to be Discussed:** The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04038.

**Contact Person for More Information:** Pamela J. Wilkerson, Designated Federal Official, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., MS-E74, Atlanta, GA. 30333, Telephone 404-498-2530.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 6, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04-23025 Filed 10-13-04; 8:45 am]

**BILLING CODE 4163-19-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2004N-0437]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act, Third-Party Premarket Submission Review, and Quality System Inspections Under the United States/European Community Mutual Recognition Agreement

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for medical devices; third-party review under the Food and Drug Administration Modernization Act (FDAMA), third-party premarket submission review, and quality system inspections under the United States/European Community (U.S./E.C.) Mutual Recognition Agreement (MRA).

**DATES:** Submit written and electronic comments on the collection of information by December 13, 2004.

**ADDRESSES:** Submit electronic comments on the collection of information to: <http://www.fda.gov/dockets/ecomments>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

#### FOR FURTHER INFORMATION CONTACT:

Peggy Robbins, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Medical Devices; Third-Party Review Under FDAMA, Third-Party Premarket Submission Review, and Quality System Inspections Under U.S./E.C. Mutual Recognition Agreement (OMB Control Number 0910-0378)—Extension**

Section 210 of FDAMA established section 523 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360m), directing FDA to accredit persons in the private sector to review certain premarket applications and notifications. Participation in this third party review program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation to FDA. Accredited third-party reviewers have the ability to review a manufacturer's submission under section 510(k) of the act (21 U.S.C. 360(k)) for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation to FDA. Third-party reviews should maintain records of their

510(k) reviews and a copy of the 510(k) for a reasonable period of time, usually a period of 3 years. This information collection will allow FDA to continue to implement the accredited person review program established by FDAMA and improve the efficiency of 510(k) review for low-to-moderate risk devices.

The third-party program under the U.S./E.C. MRA is intended to implement that part of the U.S./E.C. MRA that covers the exchange of quality system evaluation reports for all medical devices and premarket evaluation reports for selected low-to-moderate risk devices. Under the MRA, firms may apply to become designated as a U.S. conformity assessment body (CAB). Firms who are designated will be qualified to conduct quality system evaluations for all classes of devices and

product type evaluations and verifications for selected devices based on European Union (EU) requirements under the voluntary third-party program authorized by MRA. Firms designated as EU CABs could conduct quality system evaluations for all classes of devices and premarket 510(k) evaluations for selected devices based on FDA's requirements. Under the voluntary third-party program, reports of these evaluations would be submitted by the EU CABs to FDA. The EU CABs would also be required to maintain copies of their evaluation reports for a period of no less than 3 years.

Respondents to this information collection are businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Item	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Requests for accreditation	15	1	15	24	360
510(k) reviews conducted by accredited third parties	15	14	210	40	8,400
Premarket reports by EU CABs	9	5	45	40	1,800
Quality system reports by EU CABs	9	4	36	32	1,152
Totals					11,712

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

Item	No. of Record-keepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Record-keeper	Total Hours
510(k) reviews	15	14	210	10	2,100
Premarket reports by EU CABs	9	5	45	10	450
Quality system reports by EU CABs	9	4	36	10	360
Totals					2,910

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The burdens are explained as follows:

## I. Reporting

### A. Requests for Accreditation

Under the agency's third-party review pilot program, the agency received 37 applications for recognition as third-party reviewers, of which the agency recognized 7. In the past 3 years, however, the agency has averaged receipt of 15 applications for recognition of third-party review accredited persons, and 9 EU CABs. The agency has accredited 15 of the

applicants to conduct third-party reviews, and 9 EU CABs.

### B. 510(k) Reviews Conducted by Accredited Third Parties

In the 18 months under the third-party review pilot program, FDA received only 22 total 510(k)s that requested and were eligible for review by third parties. Because the third-party review program is not as limited in time as the pilot program, and is expanded in scope, the agency anticipates that the number of 510(k)s submitted for third-party review will remain the same as they were during the last OMB approval

in 2001. The agency has experienced that the number of 510(k)s submitted by accredited persons for third-party review since the last OMB approval in 2001 has been approximately 210 annually, which is 14 annual reviews per each of the estimated 15 accredited reviewers.

### 1. Premarket Reports

Under this program, EU CABs will be able to perform third-party evaluations for certain products produced in Europe for export to the United States. EU CABs would be required to submit to FDA reports of their evaluations. Based upon

information gathered since this collection was last reviewed in 2001, the agency has experienced that nine European manufacturers have not received any third-party requests for review annually. The agency estimates, based on dialog with EU officials and actual experience, nine firms will be designated to act as EU CABs.

## 2. Quality System Reports

Under this program, EU CABs will be able to perform third-party evaluations of the quality systems established by manufacturers of European products produced for export to the United States. EU CABs would be required to submit to FDA reports of their evaluations. Based upon information gathered during the negotiation of the U.S./E.C. MRA and actual experience since the collection was last approved by OMB in 2001, the agency anticipates that European manufacturers will request third-party audits for approximately 36 medical device products annually. The agency estimates that 9 EU CABs will perform these evaluations.

## II. Recordkeeping

Third-party reviewers are required to keep records of their review of each submission. The agency anticipates approximately 210 annual submissions of 510(k)s for third-party review.

As stated previously, firms designated as EU CABs will be able to perform third-party evaluations of quality systems and premarket submissions for certain products produced for export to the United States. Such review will be conducted consistent with FDA's regulatory requirements, and FDA will require the reviewers to keep, in their records, a copy of the report that they submit to FDA for each review. The agency anticipates that 45 premarket reports and 36 quality system reports will be generated and required to be maintained by EU CABs annually. The agency further estimates that each reviewer will require no more than 10

hours (2 hours per recordkeeping per report) for each to maintain such records annually.

Dated: October 4, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04-23103 Filed 10-13-04; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2004N-0186]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Animal Drug User Fees and Fee Waivers and Reductions

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Fax written comments on the collection of information by November 15, 2004.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, rm.

4B-41, Rockville, MD 20857, 301-827-1472.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Animal Drug User Fees and Fee Waivers and Reductions (OMB Control Number 0910-0540)—Extension

Enacted on November 18, 2003, the Animal Drug User Fee Act (ADUFA), (Public Law 108-130) amended the Federal Food, Drug, and Cosmetic Act (the act) and requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the agency to grant a waiver from, or a reduction of those fees in certain circumstances. Thus, to implement this statutory provision of ADUFA, FDA developed a guidance entitled "Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions." This document provides guidance on the types of fees FDA is authorized to collect under ADUFA, and how to request waivers and reductions from FDA's animal drug user fees. Further, this guidance also describes the types of fees and fee waivers and reductions; what information FDA recommends be submitted in support of a request for a fee waiver or reduction; how to submit such a request; and FDA's process for reviewing requests. Respondents to this collection of information are new animal drug sponsors. Requests for waivers or reductions may be submitted by a person paying any of the animal drug user fees assessed—application fees, product fees, establishment fees, or sponsor fees.

In the **Federal Register** of May 3, 2004 (69 FR 24169), FDA published a 60-day notice requesting comment on the collection of information. In response to that notice, no comments were received regarding the collection of information.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Section of the Act Types of Waiver or Reduction Requests	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
740(d)(1)(A) Significant barrier to innovation	5	1 time for each application	5	2	10
740(d)(1)(B) Fees exceed cost	1	"	1	2	2
740(d)(1)(C) Free choice feeds	5	"	5	2	10

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>—Continued

Section of the Act Types of Waiver or Reduction Requests	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
740(d)(1)(D) Minor use or minor species	10	“	10	2	20
740(d)(1)(E) Small business	2	“	2	2	4
Request for reconsideration of a decision	5	“	5	2	10
Request for review—(user fee appeal officer)	2	“	2	2	4
Total					60

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's database system, there are an estimated 250 sponsors of products subject to ADUFA. However, not all sponsors will have any submissions in a given year and some may have multiple submissions. The total number of waiver requests is based on the number of submissions types received by FDA in fiscal year 2003. The Center for Veterinary Medicine estimates 30 waiver requests that include the following: 5 significant barriers to innovation, 1 fee exceed cost, 5 free choice feeds, 10 minor use or minor species, 2 small business waiver requests, 5 requests for reconsideration of a decision, and 2 requests for user fee appeal officers. The estimated hours per response are based on past FDA experience with the various waiver requests in the Center for Drug Evaluation and Research. The hours per response are based on the average of these estimates.

Dated: October 8, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–23104 Filed 10–13–04; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2004N–0185]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Animal Drug User Fee Cover Sheet

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by November 15, 2004.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 4B–41, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

**Animal Drug User Fee Cover Sheet; FDA Form 3547 (OMB Control Number 0910–0539)—Extension**

Under section 740 of the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Drug User Fee Act (ADUFA) (21 U.S.C. 379j–12), FDA has the authority to assess and collect certain animal drug user fees. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. Under the new statutory

provisions (section 740(e) of the act, as amended by ADUFA), animal drug applications and supplemental animal drug applications for which the required fee has not been paid are considered incomplete and are not to be accepted for review by the agency. The types of fees that require a cover sheet are certain animal drug application fees and certain supplemental animal drug application fees. The cover sheet, FDA Form 3546, is designed to provide the minimum necessary information to determine whether a fee is required for the review of an application or supplement, to determine the amount of the fee required, and to assure that each animal drug user fee payment and each animal drug application for which payment is made, is appropriately linked to the payment that is made. The form, when completed electronically, will result in the generation of a unique payment identification number used in tracking the payment. FDA will use the information collected, to initiate administrative screening of new animal drug applications and supplements to determine if payment has been received. Inability to collect this information would delay the review process and would also delay receipt of revenue that is to be used to fund the review of animal drug applications during the current fiscal year. Respondents to this collection of information are new animal drug applicants or manufacturers.

In the **Federal Register** of May 3, 2004 (69 FR 24168), FDA published a 60-day notice requesting comment on the collection of information. In response to that notice, no comments were received regarding the collection of information.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Section of the Act as Amended by ADUFA	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
740(a)(1) FDA Form 3547 (Cover Sheet)	69	1 time for each application	69	1	69

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's database system, there are an estimated 140 manufacturers of products or sponsors of new animal drugs potentially subject to ADUFA. However, not all manufacturers or sponsors will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the number of submissions received by FDA in the fiscal year 2003. FDA's Center for Veterinary Medicine, estimates 69 annual responses that include the following: 28 new animal drug premarket approval applications and 41 supplements. The estimated hours per response are based on past FDA experience with the various submissions and range from 30 minutes to 1 hour. The hours per response are based on the average of these estimates.

Dated: October 4, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04-23105 Filed 10-13-04; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on

proposed data collection projects (section 3506(c) (2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104-13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443-1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

#### Proposed Project: Survey of Safety Net Providers for the Healthy Communities Access Program National Evaluation—New

A survey of 800 safety net providers will be performed to provide essential information not otherwise available for

the national evaluation of the Healthy Communities Access Program (Sect. 340, Pub. L. 107-251, Oct. 26, 2002). A preliminary review indicates that this sample of providers provides an adequate representation of provider types of most interest. The survey results will be considered along with information from other quantitative and qualitative data sources (including national, State and local data and information from grantee consortia leaders and clients) in order to develop a Report to Congress in September 2005 and a program evaluation report by September 2006. The survey will collect data for key evaluation goals including coordination and integration of safety net services, capacity and access issues, health care delivery, quality of care, cost savings, sustainability, and provider and patient satisfaction.

The survey of the provider institution's administrator will be multi-modal using mail, telephone, and internet modes of data collection. Mail or internet responses will be requested, with telephone follow-up or survey administration. The key types of providers to be surveyed are those specified in the law as required consortia members (*i.e.*, federally qualified health centers, hospitals, public health departments, and providers serving the medically uninsured and underserved). Two hundred providers of each type will be surveyed. The burden estimate is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Survey .....	800	1	800	.33	264

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14-33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received with 60 days of this notice.

Dated: October 8, 2004.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 04-23109 Filed 10-13-04; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Availability of Funds Announced in the HRSA Preview

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** General notice.

**SUMMARY:** Health Resources and Services Administration (HRSA) announces the availability of funds in the fiscal year (FY) 2005 HRSA Preview. The HRSA Preview is a comprehensive review of HRSA's fiscal year 2005 competitive programs. The purpose of the HRSA Preview is to provide the general public with a single source of program and application information related to the Agency's competitive grant offerings. The HRSA Preview is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of HRSA's discretionary funds for its various programs. A printer-friendly copy of the Preview can be downloaded at <http://www.hrsa.gov/grants/preview/default.htm>. A hard copy can be requested by contacting the HRSA Information Center at: HRSA Information Center, 2710 Prosperity Avenue, Fairfax, VA 22031, Telephone: 1-800-ASK-HRSA, <http://www.hrsa.gov>.

It should be noted that additional program initiatives responsive to new or emerging issues in the health care area and unanticipated at the time of publication of the HRSA Preview may be announced through the **Federal Register** and the HRSA Web site <http://www.hrsa.gov/grants.htm>. A list of these programs can also be found at the Grants.gov Web site: <http://www.grants.gov>.

HRSA continues to accept grant applications online. Please refer to the HRSA Web site at <http://www.hrsa.gov/grants/preview/default.htm> for more information.

Dated: October 6, 2004.

**Elizabeth M. Duke,**  
Administrator.

[FR Doc. 04-23107 Filed 10-13-04; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Notice of Meeting of the Advisory Committee on Organ Transplantation

**AGENCY:** Health Resources and Services Administration, HHS.

**SUMMARY:** Pursuant to Public Law 92-463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the seventh meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human

Services (HHS). The meeting will be held from approximately 9 a.m. to 5:30 p.m. on November 4, 2004, and from 9 a.m. to 5 p.m. on November 5, 2004, at the Rockville DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

ACOT will hear and discuss reports from the following ACOT subcommittees: Valuable Consideration Subcommittee, Fair Treatment Subcommittee, and Wait List Subcommittee.

The draft meeting agenda will be available on October 18 on the Department's donation Web site at <http://www.organdonor.gov/acot.html>.

A registration form will be available on October 4 on the Department's donation Web site at <http://www.organdonor.gov/acot.html>. The completed registration form should be submitted by facsimile to Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234-1701. Individuals without access to the Internet who wish to register may call Bryan Slattery with PSA at (703) 234-1734. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Director, Thomas E. Balbier, Jr., in

advance of the meeting. Mr. Balbier may be reached by telephone at 301-443-1896, e-mail: [tbalbier@hrsa.gov](mailto:tbalbier@hrsa.gov), or in writing at the address of the Division of Transplantation provided below.

Management and support services for ACOT functions are provided by the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 12C-04, Rockville, Maryland 20857; telephone number 301-443-7577.

After the presentation of the subcommittee reports, members of the public will have an opportunity to provide comments on the subcommittee reports. Because of the Committee's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting.

Dated: October 6, 2004.

**Elizabeth M. Duke,**  
Administrator.

[FR Doc. 04-23108 Filed 10-13-04; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Office of The Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Director's Council of Public Representatives.

*Date:* October 27, 2004.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* The COPR will present information and findings from a workshop that will meet on October 26, 2004. The workshop is part of a larger 80 percent workshop that the COPR is hosting in collaboration with the NIH Public Trust initiative. Additional agenda items include: (1) Welcoming remarks by the NIH Director; (2) discussion and public comment; and (3) the NIH Director's initial response and comments.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Jennifer E. Gorman Vetter, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435-4448, [gormanj@od.nih.gov](mailto:gormanj@od.nih.gov).

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: [www.nih.gov/about/publicliaison/index.html](http://www.nih.gov/about/publicliaison/index.html), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 6, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22989 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Cancer Institute Board of Scientific Advisors.

*Date:* November 8-9, 2004.

*Time:* November 8, 2004, 8 a.m. to 6 p.m.

*Agenda:* Director's Report; Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Time:* November 9, 2004, 8:30 a.m. to 1 p.m.

*Agenda:* Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Paulette S. Gray, PhD, Executive Secretary, Acting Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301-496-5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/bsa.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 6, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22991 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Cancer Institute Director's Consumer Liaison Group.

*Date:* November 4, 2004.

*Time:* 3 p.m. to 4:45 p.m.

*Agenda:* Report from NCI Listens and Learns Operations Working Group/Discussion; Report from NCI Listens and Learns Promotions Working Group/Discussion; Report from NCI Listens and Learns Summit Working Group/Discussion; Report from NCI Listens and Learns Evaluation Working Group/Discussion; Next Steps.

*Place:* National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 220, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Nancy Caliman, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 220, MSC8324, Bethesda, MD 20892, (301) 496-0307, [calimann@mail.nih.gov](mailto:calimann@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 5, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-23002 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel, NEI Small Grants for Pilot Research Review.

*Date:* November 8-9, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892-9602, (301) 451-2020, [haraj@mail.nih.gov](mailto:haraj@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 6, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22988 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel,

*Date:* November 4, 2004.

*Time:* 8 a.m. to 9 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Samuel Rawlings, PhD, Chief Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892-9300, 301-451-2020. (Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 5, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22999 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special

Emphasis Panel, 2nd Gordon Research Conference on Toxicogenomics

*Date:* November 18, 2004.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 3446, Research Triangle Park, NC 27709 (Telephone Conference Call). *Contact Person:* RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, (919) 541-0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 6, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22987 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, HLA-G at The Maternal-Getal Interact.

*Date:* October 25, 2004.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435-6889, [bhatnagg@mail.nih.gov](mailto:bhatnagg@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 6, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22990 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.

*Date:* November 4-5, 2004.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN-18, Bethesda, MD 20892, (301) 594-2886, [zacharya@nigms.nih.gov](mailto:zacharya@nigms.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 6, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22992 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group, Function, Integration, and Rehabilitation Sciences Subcommittee.

*Date:* November 1-2, 2004.

*Time:* 7:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301-435-6908, [ak41o@nih.gov](mailto:ak41o@nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 6, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22993 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NST Member Conflicts.

*Date:* October 14, 2004.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Washington, Pennsylvania Ave. at 15th Street, NW., Washington, DC 20004.

*Contact Person:* JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892-9529, (301) 496-5324, [mcconnej@ninds.nih.gov](mailto:mcconnej@ninds.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 5, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22994 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, SNRP Site Visit.

*Date:* October 14–15, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel El Convento, 100 Cristo Street, Old San Juan, PR 00901.

*Contact Person:* Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard, MSC 9529, Neuroscience Center, Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, [wiethorp@ninds.nih.gov](mailto:wiethorp@ninds.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 5, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–22996 Filed 10–13–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

*Date:* October 14–15, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Grant Hyatt San Francisco, 345 Stockton Street, San Francisco, CA 94108.

*Contact Person:* W. Earnest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

*Date:* October 19–20, 2004.

*Time:* 8:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 5, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–22997 Filed 10–13–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Peripheral and Central Interactions in Energy Balance.

*Date:* November 11, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, [rushingp@extra.niddk.nih.gov](mailto:rushingp@extra.niddk.nih.gov). (Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 5, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–22998 Filed 10–13–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Reproductive Biology Conflict.

*Date:* October 18, 2004.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435-1046, [knechtm@csr.nih.gov](mailto:knechtm@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Circadian Rhythms.

*Date:* October 21, 2004.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301-435-1713, [melchioc@csr.nih.gov](mailto:melchioc@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, DNA Damage and Mutagenesis.

*Date:* October 21, 2004.

*Time:* 4 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Hungyi Shaw, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301-435-1720, [shauhung@csr.nih.gov](mailto:shauhung@csr.nih.gov). (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 5, 2004.

**LaVerne Y. Stringfield,**  
*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-22995 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Molecular Genetics A Study Section, October 21, 2004, 8 a.m. to October 22, 2004, 4 p.m., Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 20, 2004, 69 FR 56236-56238.

The meeting is cancelled due to lack of a quorum.

Dated: October 5, 2004.

**LaVerne Y. Stringfield,**  
*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04-23000 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 GVE (01): Genetic Variation and Evolution: Quorum.

*Date:* October 14-16, 2004.

*Time:* 9 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 25th Street, NW., Washington, DC 20037.

*Contact Person:* David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, (301) 435-1038, [remondid@csr.nih.gov](mailto:remondid@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Analytical Instruments and Software Panel.

*Date:* October 18, 2004.

*Time:* 1:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, (301) 435-1159, [ameros@csr.nih.gov](mailto:ameros@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Vaccines Against Microbial Diseases.

*Date:* October 28-29, 2004.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Jian Wang, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 435-2778, [wangjia@csr.nih.gov](mailto:wangjia@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Drug Development/Delivery.

*Date:* November 1-2, 2004.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435-1180, [ruvinser@csr.nih.gov](mailto:ruvinser@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Psychopathology and Adult Disorders.

*Date:* November 1-2, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, (301) 435-2309, [pluded@csr.nih.gov](mailto:pluded@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Skin and Rheumatology.

*Date:* November 1, 2004.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594-6376, [ansaria@csr.nih.gov](mailto:ansaria@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIB 10: Small Business Bioelectromagnetics.

*Date:* November 1, 2004.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435-1171, [rosenl@csr.nih.gov](mailto:rosenl@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Mitochondrial Transporter and Erythropoiesis.

*Date:* November 1, 2004.

*Time:* 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435-1739, [gangulyc@csr.nih.gov](mailto:gangulyc@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB H 40P: Shared Resource: Complex Physiologic Signals.

*Date:* November 1-2, 2004.

*Time:* 7 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Arthur A. Petrosian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435-1258, [petrosia@csr.nih.gov](mailto:petrosia@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN G (10) Ear Study Section.

*Date:* November 2, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Joseph Kimm, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435-1249, [kimmj@csr.nih.gov](mailto:kimmj@csr.nih.gov).

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neuroendocrinology, Neuroimmunology, and Behavior Study Section.

*Date:* November 2-3, 2004.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301-435-1245, [marcusr@csr.nih.gov](mailto:marcusr@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Bone and Cartilage.

*Date:* November 2, 2004.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301-594-6376, [ansaria@csr.nih.gov](mailto:ansaria@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Red Cell Proteins.

*Date:* November 2, 2004.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435-1739, [gangulyc@csr.nih.gov](mailto:gangulyc@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 5, 2004.

**LaVerne Y. Stringfield,**  
Director, Office of Federal Advisory  
Committee Policy.

[FR Doc. 04-23001 Filed 10-13-04; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

*Comments are invited on:* (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

#### Proposed Project: GPRA Client Outcomes for the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930-0208)—Revision

The mission of SAMHSA is to improve the effectiveness and efficiency of substance abuse and mental health treatment and prevention services across the United States. All of SAMHSA's activities are designed to ultimately reduce the gap in the availability of substance abuse and mental health services and to improve their effectiveness and efficiency.

Data currently are collected from all SAMHSA knowledge application and targeted capacity expansion grants and contracts where client outcomes are to be assessed at intake (or initial contact), 6 and 12 months post admission or post-intervention. SAMHSA-funded projects are required to submit these data as a contingency of their award. The analysis of the data will also help determine whether the goal of reducing health and social costs of drug use to the public is being achieved.

The primary purpose of this data collection activity is to meet the

reporting requirements of the Government Performance and Results Act (GPRA) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA programs. In addition, the data will be useful in addressing goals and objectives outlined in ONDCP's *Performance Measures of Effectiveness*.

The revision of this data collection affects only the Center for Substance Abuse Treatment (CSAT). The proposed revision will modify the CSAT services instrument to include new questions on family characteristics, specific services and social connectedness to align with the SAMHSA Administrator's seven domains for national outcomes

measures. In addition, the data collection time points will change to intake, discharge, and 6 months post admission. It is estimated that an average of five minutes will be added to the response burden for each client.

The following is the estimated annual response burden for this collection.

Center/number of annual clients-participants	Responses per client/participant	Hours per response	Total hours	Proportion of added burden	Total hour burden
CMHS:					
3,750 .....	3	.33	3,713	0.70	2,599
CSAP:					
12,150 .....	3	.33	12,029	0.72	8,661
CSAT:					
26,031* .....	3	.42	32,799	0.47	15,416
3,500** .....	***4	.42	5,880	0.47	2,765
Total:					
45,431 .....					29,440

**Note:** This is the maximum additional burden if all clients/participants complete three sets of items. CSAP and CSAT adolescent clients/participants do not usually receive all four data collections. Added burden proportion is an adjustment reflecting the extent to which programs typically already collect the data items. The formula for calculating the proportion of added burden is: Total number of items in the standard instrument minus the number of core GPRA items currently included divided by the total number of items in the standard instrument.

\*Adults.

\*\*Adolescents.

\*\*\*Four data collections for adolescents.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7-1045, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by December 13, 2004.

Dated: October 1, 2004.

**Anna Marsh,**

*Executive Officer, SAMHSA.*

[FR Doc. 04-23026 Filed 10-13-04; 8:45 am]

BILLING CODE 4162-20-P

## DEPARTMENT OF HOMELAND SECURITY

### Office for Civil Rights and Civil Liberties; Submission for New Information Collection, DHS Individual Complaint of Employment Discrimination Form (DHS 3090-1)

**ACTION:** Notice; 60-day notice request for comments.

**SUMMARY:** The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on new information collection request (ICR), DHS Individual Complaint of Employment Discrimination form (DHS Form 3090-1). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 44 U.S.C. chapter 35) DHS is soliciting comments for the new information collection request.

**DATES:** Written comments should be received on or before December 13, 2004 to be assured consideration.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2004-0003, by one of the following methods:

- EPA Federal Partner EDOCKET Web site: <http://www.epa.gov/feddocket>. Follow instructions for submitting comments on the Web site.

The Department of Homeland Security has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). The Department of Homeland Security and its agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Federal Partner EDOCKET system. The USCG and TSA [legacy Department of Transportation (DOT) agencies] will continue to use the DOT Docket Management System until full migration to the electronic rulemaking federal docket management system in 2005.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [mary.mcgoldrick@dhs.gov](mailto:mary.mcgoldrick@dhs.gov). Include docket number DHS-2004-0003 in the subject line of the message.

- Fax: (202) 772-9860

- Mail: Department of Homeland Security, Attention: Office of Civil Rights and Civil Liberties, Anacostia Naval Annex, 245 Murray Drive, Building 410, Washington, DC 20528.

- Hand Delivery/Courier: Department of Homeland Security, Attention: Office of Civil Rights and Civil Liberties, Anacostia Naval Annex, 245 Murray Drive, Building 410, Washington, DC 20528.

**Instructions:** All submissions received must include the agency name and docket number (if available) or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.epa.gov/feddocket>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.epa.gov/feddocket>. You may also access the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mary McGoldrick, (202) 772-9921 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** Direct all written comments to both the Department of Homeland Security and the Office of Information and Regulatory Affairs at the addresses listed in this notice. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the contact listed above.

The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

#### Analysis

*Agency:* Department of Homeland Security, Office for Civil Rights and Civil Liberties.

*Title:* DHS Individual Complaint of Employment Discrimination Form.

*OMB Number:* NEW.

*Form Number:* DHS Form 3090-1.

*Frequency:* On occasion.

*Affected Public:* Federal Government and individuals or households.

*Estimated Number of Respondents:* 1,200.

*Estimated Time Per Response:* 30 minutes per response.

*Total Burden Hours:* 600.

*Total Cost Burden:* None.

*Description:* This form will allow a complainant to submit required information used by the Department to process an employment discrimination complaint with the Department of Homeland Security. The information contained in this form will allow the Department to accept, investigate and further process, or to dismiss issues.

Dated: October 7, 2004.

**Steve Cooper,**

*Chief Information Officer.*

[FR Doc. 04-23014 Filed 10-13-04; 8:45 am]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Citizenship and Immigration Services

#### Agency Information Collection Activities: Comment Request

**ACTION:** Notice of information collection under review: application to adjust status from temporary to permanent resident.

The Department Homeland Security, Bureau of Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 13, 2004.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-698, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief*

*abstract:* Primary: Individuals or Households. The data collected on this form is used by the Service to determine an applicant's eligibility to adjust status from temporary to permanent resident.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,179 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,179 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-616-7600, Director, Regulatory Management Division, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: October 7, 2004.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.*

[FR Doc. 04-23040 Filed 10-13-04; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2004-19353]

#### Lower Mississippi River Waterway Safety Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

**DATES:** The next meeting of LMRWSAC will be held on Tuesday, November 16, 2004, from 9 a.m. to 12 noon. This meeting may adjourn early if all business is finished. Requests to make oral presentations or submit written materials for distribution at the meeting should reach the Coast Guard on or before November 9, 2004. Requests to have a copy of your material distributed to each member of the committee in

advance of the meeting should reach the Coast Guard on or before November 2, 2004.

**ADDRESSES:** The meeting will be held in the Crescent City Room, Suite 1830 at the World Trade Center Building, 2 Canal Street, New Orleans, Louisiana. This notice is available on the Internet at <http://dms.dot.gov>. Written materials and requests to make presentations should be mailed to Commanding Officer, Marine Safety Office New Orleans, Attn: LCDR McKean, 1615 Poydras Street, New Orleans, LA 70112.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander (LCDR) Michael McKean, Committee Administrator, telephone (504) 589-4222, fax (504) 589-4241.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (Pub. L. 92-463, 86 Stat. 770, as amended).

#### Agenda of Meeting

*Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC).* The agenda includes the following:

- (1) Introductions.
- (2) Opening Remarks.
- (3) Approval of the May 18, 2004 minutes.
- (4) Old Business:
  - (a) Captain of the Port status report.
  - (b) VTS update report.
  - (c) Subcommittee / Working Group update reports.
- (5) New Business.
- (6) Adjournment.

#### Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than November 9, 2004. Written material for distribution at the meeting should reach the Coast Guard no later than November 9, 2004. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Committee Administrator no later than November 2, 2004.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the

Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: October 4, 2004.

**J.W. Stark**

*Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.*

[FR Doc. 04-23066 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-15-P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Bureau of Customs and Border Protection

##### Agency Information Collection Activities: Extension of Existing Collection; Comment Request

**ACTION:** Request OMB approval: screening requirements of carriers; OMB-16-1651-0122.

The Department of Homeland Security, Bureau of Customs and Border Protection has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 3, 2004 at 69 FR 171, allowing for a 60-day public comment period. No comments were received by CIS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 15, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice should be directed to the Office of Management and Budget, Attn: Desk Officer for Homeland Security, Office of Management and Budget Room 10235, Washington, DC 20503; telephone 202-395-7316. The Office of Management and Budget is particularly interested in comments which:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Screening Requirements for Carriers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB-16, Bureau of Customs and Protection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The evidence collected is used by DHS to determine whether sufficient steps were taken by a carrier demonstrating improvement in the screening of its passengers in order for the carrier to be eligible for automatic fines mitigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 65 responses at 100 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-616-7600, Director, Regulatory Management Division, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: October 7, 2004.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigrant Services.*

[FR Doc. 04-23041 Filed 10-13-04; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of a Current Public Collection of Information; Airport Access Control Pilot Program (AACPP); Satisfaction and Effectiveness Measurement Data Collection Instruments

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Notice.

**SUMMARY:** TSA invites public comment on a currently approved information collection requirement abstracted below that will be submitted to OMB for renewal in compliance with the Paperwork Reduction Act.

**DATES:** Send your comments by December 13, 2004.

**ADDRESSES:** Comments may be mailed or delivered to Lisa Dean, Privacy Officer, Office of Transportation Security Policy, TSA-9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220.

**FOR FURTHER INFORMATION CONTACT:** Lisa Dean at the above address or by telephone (571) 227-3947 or facsimile (571) 227-2555.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission to renew clearance of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

TSA intends to continue testing and evaluating certain new and emerging biometric and other technologies through the Airport Access Control Pilot

Program (AACPP), which is currently being conducted under OMB control number 1652-0020. TSA will gather biometric information, demographic information, and airport user identification from a select group of participants at 22 locations to test the use of emerging technologies for airport access control and then evaluate those technologies using two satisfaction instruments. The first instrument will be a survey given to a representative sample of airport users and the second instrument will be an interview conducted with the lead stakeholder at each site and a small percentage of persons participating in the project. Surveys and interviews will be voluntary. TSA estimates the total annual number of respondents for this collection to be 2,620 individuals and the total annual burden to be 780 hours. There is no cost burden to any of the respondents.

Issued in Arlington, Virginia, on October 7, 2004.

**Lisa S. Dean,**

*Privacy Officer.*

[FR Doc. 04-23081 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-62-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Approved Amendment to Tribal-State Compact.

**SUMMARY:** This notice publishes an approved Amendment to the Class III Tribal-State Gaming Compact between the Puyallup Tribe of Indians and the State of Washington. Under the Indian Gaming Regulatory Act of 1988, the Secretary of the Interior is required to publish notice in the **Federal Register** approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

**EFFECTIVE DATE:** October 14, 2004.

#### FOR FURTHER INFORMATION CONTACT:

George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of

engaging in Class III gaming activities on Indian lands.

The Memorandum of Incorporation of Most Favored Nation Amendments to the Tribal-State Compact between the Puyallup Tribe of Indians and the State of Washington will permit the Tribe to increase the number of Class III gaming machines it operates in one of its gaming facilities from 1,500 to 2,000. Through delegated authority, the Deputy Assistant Secretary of Indian Affairs (Management) is publishing notice that the Memorandum of Incorporation of Most Favored Nation Amendments is now in effect.

Dated: August 20, 2004.

**Woodrow W. Hopper,**

*Deputy Assistant Secretary—Indian Affairs (Management).*

[FR Doc. 04-23092 Filed 10-13-04; 8:45 am]

**BILLING CODE 4310-4N-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-360-04-2822-JS]

#### Notice of Emergency Temporary Closure of Certain Public Lands, to Motorized Vehicles and Other Uses, in Shasta and Trinity Counties, CA, Under Burned Area Emergency Stabilization and Restoration

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure.

**SUMMARY:** The Bureau of Land Management (BLM) Redding Field Office is temporarily closing portions of public lands to motorized and mechanized vehicle use, and prohibiting or restricting certain other uses on public lands managed by the Redding Field Office. This closure is needed to protect public health and safety, cultural and natural resources and stabilization treatments as recommended in the Department of the Interior's Burned Area Emergency Stabilization and Rehabilitation (BAER) Plan for the French Fire in Shasta and Trinity counties.

**DATES:** This closure is in effect from September 13, 2004 until December 31, 2005. The closure may be lifted sooner if BLM determines that road repairs, revegetation, and stabilization efforts have reduce safety hazards and significant resource concerns.

**ADDRESSES:** Copies of and map of the closed areas can be obtained at the BLM, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002, (530) 224-2100. BLM will also announce the

closure through local media outlets by posting this notice with a map of the closed areas at key locations that provide access the closure area.

**FOR FURTHER INFORMATION CONTACT:** Steven W. Anderson, Field Manager, Bureau of Land Management, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002 or Francis Berg, BLM, phone (530) 224-2100 or by e-mail at [wkuntz@ca.blm.gov](mailto:wkuntz@ca.blm.gov).

**SUPPLEMENTARY INFORMATION:** The public lands affected by the French Fire and addressed in the BAER Plan are closed to travel by horseback, motorized and mechanized vehicle use (*i.e.*, including trucks, sport utility vehicles, all-terrain vehicles, cars, motorcycles, mountain bikes) except for: Authorized access to private lands and mining claims, use by fire and law enforcement vehicles, emergency activities and other authorized uses. The authorities for this closure and restriction order are 43 CFR 8364.1 and 9268.3(d).

The following paragraphs explain the background for BLM's management of the closed lands, and the reason for the closure and restriction.

These lands and roads are temporarily closed to vehicles to protect public health and safety from rockslides, timber deadfall and slope failure due to loss of vegetation and falling trees in the areas affected by the fire, and to allow for post-fire road reconstruction and maintenance. The treat of increased vehicle use may increase due to the lack of vegetation and other physical barriers that previously blocked access. There is also the increased potential for the introduction of invasive/non-native plants in the burdened areas from motorized and mechanized vehicles, and the potential for collection or lotting of cultural and historical artifacts now revealed due to the loss of vegetation. This closure and restriction order applies to approximately 7,153 acres of public lands affected by the French Fire of August 2004.

## Closure Order

### Section 1. Closed Lands

This closure affects all of the public lands and roads, subject to the exceptions in Section 2, located within the French Fire perimeter. Public lands in the following described tracts are closed to travel by horseback, motorized and mechanized vehicles:

T. 33N., R6W, sections 18, and 19, M.D.M.  
T. 33N., R7W, sections 4, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 22, 24, 25, 26, 28, and 32, M.D.M.  
T. 33N., R8W, sections 12, 13, and 24, M.D.M.

A total of approximately 7,153 acres

### Section 2. Exceptions to Closures and Restriction Orders

These closures and restrictions do not apply to the following roads: Trinity Mountain Road, Hoadley Peak Road, North County Line Road, Highland Ridge Road, Tom Green Mine Road, Lewiston Turnpike and French Gulch Road. The closures and restrictions do not apply to authorized emergency vehicles, rescue vehicles, BLM operation and maintenance vehicles, resource management and recovery activities, use by fire and law enforcement vehicles. In addition, access to mining claims and private property by property owners may be authorized by the BLM Field Manager or the acting Field Manager. Nothing in this closure is intended to affect legal hunting as consistent with California Department of Fish and Game regulations.

### Section 3. Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360-7, if you violate these closures or restrictions on public lands within the boundaries established, you may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

### Section 4. Conditions for Ending Closures and Restrictions

Soil stabilization, revegetation, road repairs, and treatments to control invasive species will be considered successful, and the area may be returned to preclosure travel designations and opened sooner than December 31, 2005, if and when the following occur:

a. All culverts, road safety signs, fencing, and gates have been replaced or repaired.

b. Slopes and soils within the French Fire perimeter show signs of stabilization and have not experienced slope failure through at least one winter season and at least two major rain events.

c. Regrowth of vegetation has sufficiently obscured cultural sites previously exposed by the fire.

d. Seeding treatments on areas or natural revegetation (identified in BAER Plan for French Fire) have resulted in at least 30% regeneration of native species,

or have been deemed unsuccessful after at least one full growing season.

**J. Anthony Danna,**

*Deputy State Director, Natural Resources, California State Office.*

[FR Doc. 04-23031 Filed 10-13-04; 8:45 am]

**BILLING CODE 4310-40-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-070-1430-ES; NMMN-108598]

### Notice of Realty Action: Non-Competitive Direct Sale of Public Lands in San Juan County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** Lands in San Juan County, New Mexico are being considered for direct sale to San Juan County utilizing non-competitive procedures at the appraised fair market value.

**SUPPLEMENTARY INFORMATION:** Authority for the sale is Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA).

The lands are described as follows:

#### New Mexico Principal Meridian

T. 29 N., R. 12 W.,

Sec. 28: E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ :

The lands contain 1.26 acres, more or less, located south of the San Juan County Fair grounds. This parcel of land, situated in San Juan County, is being considered for a direct sale to San Juan County, the adjacent property owner. The sale price will not be less than the fair market value of \$30,000.00. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area, and a direct sale to the County would be in the public interest. A sale will settle a trespass and allow expansion of existing rodeo grounds. In the event of a sale, the conveyance will be of surface interests only. Any patent, when issued, will contain the following reservations to the United States:

1. Patent Reservations:

A. All valid existing rights (including rights-of-ways).

B. Reserve a right for the Federal Government to construct ditches and canals.

C. Reserve all minerals to the Federal Government.

On October 14, 2004, the public lands described above are segregated from all forms of appropriation under the public land laws, including the mining laws until July 11, 2005. The segregative

effect shall terminate as provided by 43 CFR 2711.1–2(d).

Interested parties may submit comments on the proposed sale to the Field Manager, Bureau of Land Management (BLM) Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401 until November 29, 2004. Any Adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this notice of realty action. The BLM may withdraw any land or interest in the land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws. The lands will not be sold before December 13, 2004.

**Dave Mankiewicz,**

*Assistant Field Manager, Farmington, New Mexico.*

[FR Doc. 04–23127 Filed 10–8–04; 4:19 pm]

**BILLING CODE 1430–VB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR–014–01–1430–EU; GP–04–0239]

#### **Competitive Sale of 520 Acres of Public Lands, OR 53188; Modified Competitive Sale of 40 Acres of Public Lands, OR 59445**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) is considering for sale two parcels of land in Klamath County, Oregon, at not less than their respective appraised fair market value. A 520-acre parcel is proposed to be sold through competitive bidding. An adjoining 40-acre parcel is proposed to be sold through modified competitive bidding, whereby the adjacent land owner, will be given the opportunity to meet the highest bid.

**DATES:** All comments must be received in writing by BLM on or before bid dates, and are stated below in this notice.

**ADDRESSES:** Send all written comments concerning the proposed sales to Jon Raby, BLM, Klamath Falls Resource Area Field Manager, Klamath Falls Field Office, 2795 Anderson Ave., Building 25, Klamath Falls, Oregon 97603. Electronic format submittals will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Linda Younger, Realty Specialist, at (541) 883–6916.

**SUPPLEMENTARY INFORMATION:** In accordance with the applicable provisions of 43 CFR part 2710, the following described public lands in Klamath County, Oregon, are proposed to be sold pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719). Both of the parcels described herein are difficult and uneconomic to manage as a part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by their disposal. The parcels proposed for sale are identified as suitable for disposal in the Klamath Falls Resource Area Resource Management Plan, dated June 2, 1995.

The parcels described below are hereby segregated from appropriation under the public land laws including the mining laws until July 11, 2005. The segregative effect on these parcels imposed by publication of this notice will terminate on July 11, 2005, upon issuance of patents for the described properties, or publication of a notice in the **Federal Register** terminating the segregation, whichever occurs first.

#### **Parcel I (Competitive Sale)**

##### **Willamette Meridian, Oregon**

T. 40 S., R. 11 E.,  
Sec. 27, SE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 33, E $\frac{1}{2}$ NE $\frac{1}{4}$ ;  
Sec. 34, N $\frac{1}{2}$ .

The area described contains 520 acres, more or less. The appraised market value for Parcel I is \$182,000.00.

Sealed bids for Parcel I will be opened to determine the high bidder at 10 a.m. PST, December 15, 2004, at the BLM Klamath Falls Field Office (address stated above).

Offers to purchase Parcel I will be made only by sealed bids. All bids must be received at the BLM, Klamath Falls Field Office, 2795 Anderson Ave., Building 25, Klamath Falls, Oregon, 97603, not later than 4:30 p.m. PST, December 14, 2004.

The outside of bid envelopes for Parcel I must be clearly marked on the front lower left-hand corner with “BLM Land Sale OR 53188,” and the bid opening date. Bids must be for not less than the appraised market value of \$182,000.00. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier’s check made payable in U.S. Currency to the order of the Bureau of Land Management, for not less than 20 percent of the amount bid.

The bid envelope must also contain a statement showing the total amount bid and the name, mailing address, and

phone number of the entity making the bid.

#### **Parcel II (Modified Competitive Sale)**

##### **Willamette Meridian, Oregon**

T. 40 S., R. 11 E.,

Sec. 34, NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

The area described contains 40 acres, more or less. The appraised fair market value for this parcel is \$5,000.00.

Offers to purchase Parcel II will be made only by sealed bid. All bids must be received at the BLM, Klamath Falls Field Office, 2795 Anderson Ave., Building 25, Klamath Falls, Oregon, 97603, not later than 4:30 p.m. PST, on December 14, 2004.

Sealed bids for Parcel II will be opened to determine the apparent high bidder at 9 a.m. PST, on December 15, 2004, at the BLM, Klamath Falls Field Office (address stated above).

The outside of the sealed bid envelopes for Parcel II, must be clearly marked on the front lower left-hand corner with “BLM Land Sale, OR 59445” and the bid opening date. Bids must be for not less than the appraised market value of \$5,000.00. Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier’s check made payable in U.S. currency to the order of the Bureau of Land Management, for not less than 20 percent of the amount bid.

The bid envelope must also contain a statement showing the total amount bid and the name, mailing address, and phone number of the entity making the bid.

Under modified competitive sale procedures, the apparent high bidder and the designated bidder (Mr. Randall Turner) will be notified. Mr. Turner shall have 30 days from the bid opening date to exercise his right to meet the high bid. Refusal or failure for any reason to meet the highest bid shall constitute a waiver of Mr. Turner’s preferential consideration and the apparent high bidder shall be declared the high bidder.

#### **Additional Terms and Conditions of Sale**

Prospective purchasers will be allowed 180 days to submit the balance of the purchase price. Failure to meet this timeframe shall cause the deposit to be forfeited to the BLM. The parcel will then be offered to the next lowest qualified bidder, or if no other bids were received, the parcel will be declared unsold.

Federal law requires that public land may be sold only to either (1) Citizens of the United States 18 years of age or older; (2) corporations subject to the laws of any State and of the United

States; (3) other entities such as an association or a partnership capable of holding land or interests therein under the laws of the State within which the land is located; or (4) a State, State instrumentality or political subdivision authorized to hold property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of a patent.

The following rights, reservations, and conditions will be included in the patent that may be issued as to each of the above described parcels of land:

1. A reservation to the United States for a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States for all oil, gas and geothermal resources in the land in accordance with section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

3. The patent will include a notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act. All parcels are subject to the requirements of section 120(h) (42 U.S.C. section 9620) holding the United States harmless from any release of hazardous materials that may have occurred as a result of the unauthorized use of the property by other parties. No Warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the parcel of land proposed for sale.

4. The parcel is subject to valid existing rights.

The mineral interests being offered for conveyance have no known mineral value. A successful bid constitutes an application for conveyance of the mineral interest. In addition to the full purchase price, a nonrefundable fee of \$50 will be required by the successful bidder for purchase of the mineral interests to be conveyed simultaneously with the sale of the land, with the exception of all leaseables, including oil, gas and geothermal interests, which will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

The lands described herein are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

#### Public Comments

Detailed information concerning these proposed land sales, including the

reservations, sale procedures and conditions, appraisals, planning and environmental documents, and mineral report is available for review at the Bureau of Land Management, Klamath Falls Field Office, 2795 Anderson Ave., Building 25, Klamath Falls, Oregon 97603.

Any adverse comments will be reviewed by the Manager of the BLM, Lakeview, Oregon, District Office, who may sustain, vacate, or modify this realty action. In the absence of any such comments, this realty action will become the final determination of the Department of the Interior.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

(Authority: 43 CFR 2711.1-2)

Dated: September 9, 2004.

**Don Hoffheins,**

*Acting Field Manager, Klamath Falls Resource Area.*

[FR Doc. 04-23032 Filed 10-13-04; 8:45 am]

**BILLING CODE 4310-33-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-190-04-1610-DS]

#### Notice of Extension of Comment Period for the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for the Clear Creek Management Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of extension of comment period for the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (Draft RMP/Draft EIS) for the Clear Creek Management Area, Hollister Field Office, California.

**SUMMARY:** The Bureau of Land Management (BLM) announces an extension of the comment period on the Draft RMP/Draft EIS for the Clear Creek Management Area. The Original Notice of Availability issued July 19, 2004 (69FR43011) provided for a comment period to end on October 15, 2004. BLM is extending the comment period to November 15, 2004 to allow agencies and the public additional time to provide comments on the Draft RMP/Draft EIS.

**DATES:** Comments on the Draft RMP/Draft EIS must be received no later than November 15, 2004 at the address listed below.

**ADDRESSES:** Written comments should be sent to CCMA RMP Team, Bureau of Land Management, Hollister Field Office, 20 Hamilton Court, Hollister, CA 95023. Comments may also be sent by e-mail to [Lesly\\_Smith@ca.blm.gov](mailto:Lesly_Smith@ca.blm.gov).

#### FOR FURTHER INFORMATION CONTACT:

George E. Hill, Assistant Field Manager, at the above address, telephone number (831) 630-5036, or e-mail: [George\\_Hill@ca.blm.gov](mailto:George_Hill@ca.blm.gov).

Dated: October 6, 2004.

**Robert E. Beehler,**

*Field Office Manager, Hollister Field Office.*

[FR Doc. 04-22922 Filed 10-13-04; 8:45 am]

**BILLING CODE 4310-40-P**

## INTERNATIONAL TRADE COMMISSION

### Investigation No. 731-TA-364 (Second Review)

#### Aspirin From Turkey

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of five-year review.

**SUMMARY:** The subject five-year review was initiated in July 2004 to determine whether revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On October 1, 2004, the Department of Commerce published notice that it was revoking the order effective August 20, 2004 because "the domestic interested parties did not participate in this sunset review" (69 FR 58891). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

**EFFECTIVE DATE:** August 20, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Mary Messer (202) 205-3193, Office of Investigations, U.S. International Trade Commission, 500 E Street SW.,

Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

**Authority:** This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: October 8, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04-23029 Filed 10-13-04; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Notice of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States and State of Texas v. City of Carthage*, Civ. No. 6:04-CV-451, DOJ #90-5-1-1-07648, was lodged in the United States District Court for the Eastern District of Texas on September 30, 2004. The Consent Decree resolves the liability of the named defendant to the United States and the State of Texas for violations of Section 301 of the Clean Water Act, 33 U.S.C. 1311. The claims arise from the City's discharge of effluent from its publicly owned treatment works in violation of the effluent limits contained in its National Pollution Discharge Elimination System permits.

The proposed Consent Decree provides that the City will construct an improved treatment system using chlorination to treat the effluent and meet specified operation and maintenance requirements. Additionally, the City will pay a civil penalty of \$20,000 for the violations of the Clean Water Act and will perform a supplemental environmental project ("SEP") which consists of hooking up 29 residences that are currently on septic tanks to sewer lines.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States and State of Texas v. City of Carthage*, DOJ #90-5-1-1-07648. The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Texas, Tyler Division, 110 N. College St., Suite 700 Tyler, Texas 75702, and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$13.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Thomas Mariani,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04-23097 Filed 10-13-04; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on September 30, 2004, a proposed Consent Decree in *United States v. Chevron Phillips Chemical Company LP*, Civil Action No. H-04-3814 was lodged with the United States District Court for the Southern District of Texas.

In this action the United States sought injunctive relief and a civil penalty to address violations of Section 112(r) of the Act, 42 U.S.C. 7412(r), (prevention of accidental chemical releases); 40 CFR Part 68, Chemical Accident Prevention Provisions; and 40 CFR Part 60, New Source Performance Standards related to the Pasadena Plastics Complex, a chemical manufacturing facility owned and operated by Chevron Phillips Chemical Company LP ("Chevron Phillips") in Pasadena, Texas.

Under the proposed Consent Decree, Chevron Phillips has agreed to pay a

\$1.8 million civil penalty. In addition, Chevron Phillips will perform two Supplemental Environmental Projects ("SEPs") at a cost of at least \$1.2 million. The first project requires Chevron Phillips to buy and arrange for the installation of a fuel cell to provide electricity for the operation of Moody Gardens, located in the Houston/Galveston non-attainment area. The second project requires Chevron Phillips to supply hazardous material equipment and training to the Pasadena Volunteer Fire Department. The settlement also requires Chevron Phillips to satisfy a number of work practice requirements designed to help reduce the chances of accidental releases of hazardous chemicals from the facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Chevron Phillips Chemical Company*, D.J. Ref. No. 90-5-2-1-07840.

The Consent Decree may be examined during the public comment period on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$11.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Thomas A. Mariani, Jr.,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04-23098 Filed 10-13-04; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice of hereby given that on September 22, 2004 a proposed Consent

Decree in *United States v. Chief Consolidated Mining Company, et. al.*, an action under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9607 and 9613, was lodged with the United States District Court for the District of Utah, Case No. 2:04CV00891 BSJ.

In this action, the United States sought the recovery of costs incurred and to be incurred by the United States in response to releases or threatened releases of hazardous substances at and from the Eureka Mills NPL Site located in Eureka, Utah (the "Site"). The United States alleged that the Chief Consolidated Mining Company ("Chief") was liable under CERCLA Section 107(a)(1) and (2), 42 U.S.C. 9607(a)(1) and (2), as a past owner and operator of a portion of the Site at the time of disposal and as a present owner of a portion of the Site upon which hazardous substances have been released, for those response costs set forth in CERCLA Section 107(a)(4)(A)–(D), 42 U.S.C. 9607(a)(4)(A)–(D).

The Chief settlement is based on the company's limited financial resources and contains a confession of judgment in favor of EPA in the amount of sixty million dollars (\$60,000,000.00) which may be satisfied through the sale of Chief real estate holdings together with future profits, if any, and the proceeds from any insurance recovery. Additionally, the Chief Decree provides for various in-kind contributions of materials like clean water and soil necessary to implement the clean up and allows EPA to construct permanent repositories to contain contaminated soils on Chief's property.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, v. Chief Consolidated Mining Company, et. al.*, DJ# 901–11–3–07993/2.

The Consent Decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice,

Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$13.25 payable to the U.S. Treasury (excluding appendices).

**Robert Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04–23101 Filed 10–13–04; 8:45 am]

**BILLING CODE 4410–IS–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act, 33 U.S.C. 1251 Act, et seq.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and the State of Ohio v. City of Clyde, Ohio.*, Civil Action No. 3:04CV7587, was lodged on September 29, 2004, with the United States District Court for the Northern District of Ohio.

The proposed Consent Decree concerns injunctive relief and civil penalties against the City of Clyde, Ohio ("Clyde"), for alleged violations of the Clean Water Act ("the Act"), 33 U.S.C. 1251 et seq. Clyde owns and operates a publicly-owned wastewater treatment works ("POTW"), and the proposed Consent Decree addresses discharges of effluent from the POTW through an outfall into Raccoon Creek, a navigable water of the United States. It also resolves allegations that Clyde violated its 1994, 1997 and 2002 National Pollutant Discharge and Elimination System ("NPDES") permits and Section 301 of the Act, 33 U.S.C. 1311, by: (1) Exceeding the effluent limitations contained in the three NPDES permits (or "the three permits"), (2) failing to comply with the monitoring requirements contained in the three NPDES permits, (3) failing to meet the compliance schedules contained in the NPDES permits, and (4) failing to comply with an EPA issued Administrative Order ("AO").

In addition to resolving the allegations in the federal and state Complaints, the proposed Consent Decree provides for injunctive relief which includes Clyde coming into compliance with the current NPDES Permit and preparing a long term control plan for the regulating agencies. Installation of a compliance control screen, monitoring of Clyde's outfall, and reporting requirements are also

included. Clyde will also pay a \$35,000 penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611; and reference *United States and the State of Ohio v. City of Clyde, Ohio*, DJ #90–5–1–1–06524.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Ohio, Four Seagate, Suite 308, Toledo, OH 43604, and at the Region 5 office of the Environmental Protection Agency, 77 West Jackson Boulevard, 7th Floor, Chicago, IL 60604. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood, ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514–0097; phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$28.00 (25 cents per page reproduction cost), payable to the U.S. Treasury, for the proposed Consent Decree with all attachments, or for \$7.75 for the proposed Consent Decree only, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer the *United States and the State of Ohio v. City of Clyde, Ohio*, DJ #90–5–1–1–06524.

**William Brighton,**

*Assistant Section Chief, Environmental Enforcement Section.*

[FR Doc. 04–23099 Filed 10–13–04; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to Oil Pollution Act

Notice is hereby given that on September 30, 2004, a proposed consent decree in *United States v. France Shipmanagement S.A.*, Civil Action No. 04–cv–048–7–JHR–JBR, was lodged with the United States District Court for the District of New Jersey.

The proposed consent decree will settle the United States' claims for natural resource damages under the Oil Pollution Act, 33 U.S.C. 2701, *et seq.*, on behalf of the National Oceanic and Atmospheric Administration ("NOAA") and the Department of the Interior ("DOI") (together, the "Federal Trustees") against France Shipmanagement S.A. relating to an oil spill from the tank vessel *Anitra*, which occurred in May 1996 in the Big Stone Anchorage of the Delaware Bay. Pursuant to the proposed consent decree, France Shipmanagement S.A. will pay \$1,500,000.00 as natural resource damages to the Federal Trustees and to the State of New Jersey's Department of Environmental Protection (together, the "Trustees"). Of that amount, approximately \$237,000 has been, or will be, paid to the Trustees for reimbursement of their assessment costs. The remaining approximately \$1,273,000.00 will be utilized by the Trustees for restoration projects.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al., v. France Shipmanagement S.A.*, Civil Action No. 04-cv-04807-JHR-JBR, D.J. Ref. 90-5-1-1-4380.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. If requesting a copy of the proposed consent decree, please so note and enclose a check in the amount of \$16.75 (25 cent per page reproduction cost) payable to the U.S. Treasury.

**Ronald Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04-23100 Filed 10-13-04; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 20, 2004, a proposed consent decree in *United States v. Mississippi Bakery, a division of Aldi, Inc.*, Civil Action No. 304CV80102 was lodged with the United States District Court for the Southern District of Iowa.

In this action the United States sought civil penalties and injunctive relief with respect to violations of the Clean Air Act, 42 U.S.C. 7401, *et seq.* ("CAA") at defendant's Mississippi Bakery facility located in Burlington, Iowa. This consent decree requires the defendant to pay a civil penalty of \$60,000 and to perform injunctive relief to address violations of the industrial refrigerant repair, testing, recordkeeping and reporting regulations at 40 CFR Part 82, Subpart F, §§ 82.152-82.166, promulgated pursuant to Subchapter VI of the CAA, 42 U.S.C. 7671-7671q.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Mississippi Bakery, a division of Aldi, Inc.*, D.J. Ref. 90-5-2-08100.

The consent decree may be examined at the Office of the United States Attorney, Southern District of Iowa, U.S. Courthouse Annex, Southern District of Iowa, U.S. Courthouse Annex, Suite 286, 110 E. Court Avenue, Des Moines, Iowa 50309, and at U.S. EPA Region 7, 901 No. 5th Street, Kansas City, Kansas 66101. During the public comment period, the consent decree, may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax No. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of

\$3.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Catherine R. McCabe,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04-23102 Filed 10-13-04; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on September 30, 2004, a proposed Consent Decree in *United States and State of Texas v. City of Plainview*, Civil Action No. 5-04CV0218-C was lodged with the United States District Court for the Northern District of Texas.

In this action the United States sought civil penalties and injunctive relief for violations of Sections 301, 309 and 402 of the Clean Water Act ("the Act"), 33 U.S.C. 1311, 1319, and 1342, and for violations of the City's National Pollutant Discharge Elimination System ("NPDES") permit for the City's publicly owned wastewater treatment works ("POTW"), located in Plainview, Texas. The Consent Decree settles the claims that the city violated the Act and its NPDES permit by: (1) Discharging pollutants in excess of the effluent limitations specified in its NPDES permit; (2) failing to comply with the final effluent limitations specified for Ammonia-Nitrogen by March 1, 2000; and (3) failing to operate and maintain its POTW as required by the permit. The Consent Decree requires that the City pay a \$75,000 civil penalty to the federal government. The Consent Decree also requires that the City implement and comply with a comprehensive Management, Operation and Preventative Maintenance Program for its POTW during the term of the Consent Decree, and provide quarterly and annual reports to the EPA with copies to the State of Texas.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States and State of Texas v. City of Plainview*, D.J. Ref. 90-5-1-1-07661.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Texas,

1205 Texas Avenue, Suite 700, Lubbock, Texas 79401, and at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$12.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Thomas A. Mariani, Jr.,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04-23096 Filed 10-13-04; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Stipulated Order To Amend Consent Judgment Under Environmental Laws and Partially Substitute Parties

Notice is hereby given that on October 8, 2004, a proposed Stipulated Order was lodged with the United States District Court for the Eastern District of Michigan in *United States v. Velsicol Chemical Corp.*, No. 82-10303 (E.D. Mich.). The Stipulated Order among the United States on behalf of the Environmental Protection Agency, the State of Michigan, and Velsicol Chemical Corporation ("Velsicol") would substitute the Custodial Trust created in the bankruptcy settlement agreement in *In re Fruit of the Loom, Inc.*, No. 99-4497 (Bankr. D. Del.) for Velsicol and would resolve Velsicol's obligations under the 1982 Consent Judgment as provided in the Stipulated Order and the bankruptcy settlement agreement. The 1982 Consent Judgment concerns the St. Louis Facility in St. Louis, Gratiot County, Michigan.

The Department of Justice will receive comments relating to the Stipulated Order for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United*

*States v. Velsicol Chemical Corporation*, DJ Ref. No. 90-7-1-105.

The Stipulated Order may be examined at the Office of the United States Attorney for the Eastern District of Michigan, 211 West Fort Street, Suite 2001, Detroit, Michigan, and at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. During the public comment period, the Stipulated Order may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Stipulated Order may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$27.75 (25 cents per page reproduction cost) payable to the U.S. Treasury for the entire Stipulated Order and attachments or the amount of \$3.00 for the Stipulated Order without attachments.

**Bruce S. Gelber,**

*Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 04-23095 Filed 10-13-04; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(b) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on May 24, 2004, Cambrex North Brunswick, Inc., Technology Center of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to import the controlled substance to manufacture amphetamine.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections or requests for hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than November 15, 2004.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745-43746), all applicants for registration to import a basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: September 28, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04-23056 Filed 10-13-04; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is notice that on July 6, 2004, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

Drug	Schedule	Drug	Schedule
Cathinone (1235) .....	I	3-Methylfentanyl (9813) .....	I
Methcathinone (1237) .....	I	Alpha-Methylfentanyl (9814) .....	I
N-Ethylamphetamine (1475) .....	I	Acetyl-alpha-methylfentanyl (9815) .....	I
N,N-Dimethylamphetamine (1480) .....	I	Beta-hydroxyfentanyl (9830) .....	I
Aminorex (1585) .....	I	Beta-hydroxy-3-methylfentanyl (9831) .....	I
4-Methylaminorex (cis isomer) (1590) .....	I	Alpha-Methylthiofentanyl (9832) .....	I
Gamma hydroxybutyric acid (2010) .....	I	3-Methylthiofentanyl (9833) .....	I
Methaqualone (2565) .....	I	Thiofentanyl (9835) .....	I
Alpha-Ethyltryptamine (7249) .....	I	Amphetamine (1100) .....	II
Lysergic acid diethylamide (7315) .....	I	Methamphetamine (1105) .....	II
Tetrahydrocannabinols (7370) .....	I	Phenmetrazine (1631) .....	II
Mescaline (7381) .....	I	Methylphenidate (1724) .....	II
3,4,5-Trimethoxyamphetamine (7390) .....	I	Ambobarbital (2125) .....	II
4-Bromo-2,5-dimethoxyamphetamine (7391) .....	I	Pentobarbital (2270) .....	II
4-Bromo-2,5-dimethoxyphenethylamine (7392) .....	I	Secobarbital (2315) .....	II
4-Methyl-2,5-dimethoxyamphetamine (7395) .....	I	Glutethimide (2550) .....	II
2,5-Dimethoxyamphetamine (7396) .....	I	Nabilone (7379) .....	II
2,5-Dimethoxy-4-ethylamphetamine (7399) .....	I	1-Phenylcyclohexylamine (7460) .....	II
3,4-Methylenedioxyamphetamine (7400) .....	I	Phencyclidine (7471) .....	II
5-Methoxy-3,4-methylenedioxyamphetamine (7401) .....	I	1-Piperidinocyclohexanecarbonitrile (8603) .....	II
N-Hydroxy-3,4-methylenedioxyamphetamine (7402) .....	I	Alphaprodine (9010) .....	II
3,4-Methylenedioxy-N-ethylamphetamine (7404) .....	I	Cocaine (9041) .....	II
3,4-Methylenedioxymethamphetamine (7405) .....	I	Codeine (9050) .....	II
4-Methoxyamphetamine (7411) .....	I	Dihydrocodeine (9120) .....	II
Bufotenine (7433) .....	I	Oxycodone (9143) .....	II
Diethyltryptamine (7434) .....	I	Hydromorphone (9150) .....	II
Dimethyltryptamine (7435) .....	I	Diphenoxylate (9170) .....	II
Psilocybin (7437) .....	I	Benzoylcegonine (9180) .....	II
Psilocyn (7438) .....	I	Ethylmorphine (9190) .....	II
Acetyldihydrocodeine (9051) .....	I	Hydrocodone (9193) .....	II
Benzylmorphine (9052) .....	I	Levomethorphan (9210) .....	II
Codeine-N-oxide (9053) .....	I	Levorphanol (9220) .....	II
Dihydromorphone (9145) .....	I	Isomethadone (9226) .....	II
Heroin (9200) .....	I	Meperidine (9230) .....	II
Hydromorphinol (9301) .....	I	Methadone (9250) .....	II
Methyldihydromorphone (9304) .....	I	Methadone-intermediate (9254) .....	II
Morphine-N-oxide (9307) .....	I	Dextropropoxyphene, bulk (non-dosage forms) (9273) .....	II
Normorphine (9313) .....	I	Morphine (9300) .....	II
Pholcodine (9314) .....	I	Thebaine (9333) .....	II
Acetylmethadol (9601) .....	I	Levo-alphaacetylmethadol (9648) .....	II
Allylprodine (9602) .....	I	Oxymorphone (9652) .....	II
Alphaacetylmethadol except levo-alphaacetylmethadol (9603) .....	I	Noroxymorphone (9668) .....	II
Alphameprodine (9604) .....	I	Racemethorphan (9732) .....	II
Alphamethadol (9605) .....	I	Alfentanil (9737) .....	II
Betacetylmethadol (9607) .....	I	Sufentanil (9740) .....	II
Betameprodine (9608) .....	I	Fentanyl (9801) .....	II
Betamethadol (9609) .....	I		
Betaprodine (9611) .....	I		
Hydroxypethidine (9627) .....	I		
Noracymethadol (9633) .....	I		
Norlevorphanol (9634) .....	I		
Normethadone (9635) .....	I		
Trimeperidine (9646) .....	I		
Phenomorphan (9647) .....	I		
Para-Fluorofentanyl (9812) .....	I		

The company plans to manufacture small quantities of the listed controlled substances to make reference standards for distribution to their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than December 13, 2004.

Dated: September 28, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04-23053 Filed 10-13-04; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on June 29, 2004, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235) .....	I
Methcathinone (1237) .....	I
N-Ethylamphetamine (1475) .....	I
Gamma hydroxybutyric acid (2010) .....	I
Ibogaine (7260) .....	I
Tetrahydrocannabinols (7370) .....	I
Mescaline (7381) .....	I
4-Bromo-2,5-dimethoxyamphetamine (7391) .....	I
4-Bromo-2,5-dimethoxyphenethylamine (7392) .....	I
4-Methyl-2,5-dimethoxyamphetamine (7395) .....	I
2,5-Dimethoxyamphetamine (7396) .....	I
3,4-Methylenedioxyamphetamine (7400) .....	I
3,4-Methylenedioxymethamphetamine (7404) .....	I
3,4-Methylenedioxymethamphetamine (7405) .....	I
4-Methoxyamphetamine (7411) .....	I
Psilocybin (7437) .....	I
Psilocyn (7438) .....	I
Etorphine (9056) .....	I
Heroin (9200) .....	I
Pholcodine (9314) .....	I
Amphetamine (1100) .....	II
Methamphetamine (1105) .....	II
Amobarbital (2125) .....	II
Pentobarbital (2270) .....	II
Cocaine (9041) .....	II

Drug	Schedule
Codeine (9050) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Benzoyllecgonine (9180) .....	II
Ethylmorphine (9190) .....	II
Meperidine (9230) .....	II
Methadone (9250) .....	II
Dextropropoxyphene, bulk (non-dosage forms) (9273) .....	II
Morphine (9300) .....	II
Thebaine (9333) .....	II
Levo-alphaacetylmethadol (9648) ..	II
Oxymorphone (9652) .....	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections or requests for hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than November 15, 2004.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f).

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745-46), all applicants for registration to import a basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: September 28, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04-23054 Filed 10-13-04; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 29, 2004, and published in the **Federal Register** on April 29, 2004, (69 FR 23537-23538), Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance in Schedule II.

The company plans to manufacture the product in bulk to distribute to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cody Laboratories, Inc. to manufacture the basic class of controlled substance listed is consistent with the public interest at this time. DEA has investigated Cody Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 28, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04-23055 Filed 10-13-04; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 9, 2004, and published in the **Federal Register** on April 26, 2004, (69 FR 22566), Penick, Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances:

Drug	Schedule
Cocaine (9041) .....	II
Codeine (9050) .....	II
Dihydrocodeine (9120) .....	II
Oxycodone (9143) .....	II
Hydromorphone (9150) .....	II
Diphenoxylate (9170) .....	II
Ecgonine (9180) .....	II
Hydrocodone (9193) .....	II
Morphine (9300) .....	II
Thebaine (9333) .....	II
Oxymorphone (9652) .....	II

The company plans to manufacture bulk controlled substances and non-controlled substance flavor extracts.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Penick Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 28, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04-23060 Filed 10-13-04; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Registration

Notice dated June 1, 2004, and published in the **Federal Register** on June 16, 2004, (69 FR 33666), Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Methadone Intermediate (9254), a basic class of controlled substance in Schedule II.

The company plans to manufacture the listed controlled substance for

distribution as a bulk product to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siegfried (USA), Inc. to manufacture the basic class of controlled substance listed is consistent with the public interest at this time. DEA has investigated Siegfried (USA), Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 28, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04-23059 Filed 10-13-04; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review: Comment Request

October 6, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202-693-4129 (this is not a toll-free number) or e-mail: [king.darrin@dol.gov](mailto:king.darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Bureau of Labor Statistics.

*Type of Review:* Extension of a currently approved collection.

*Title:* National Compensation Survey.

*OMB Number:* 1220-0164.

*Frequency:* Annually and Quarterly.

*Type of Response:* Recordkeeping and Reporting.

*Affected Public:* Business and other for-profit; Not-for-profit institutions; and State, Local, or Tribal Government.

*Number of Respondents:* 39,292 (3 year average).

*Number of Annual Responses:* 72,722 (3 year average).

*Total Burden Hours:* 56,564 (3 year average).

#### ANNUAL RESPONDENT BURDEN BY FORM (Average of FY 2005, FY 2006, FY 2007)

Form	Total annual responses*	Average response time (minutes)	Annual burden hours
Establishment collection form (NCS Form 04-1G) .....	1,533	19.00	486
Establishment collection form (NCS Form 04-1P) .....	4,134	19.00	1,309
Earning form (NCS Form 04-2G) .....	1,533	20.00	511
Earning form (NCS Form 04-2P) .....	4,134	20.00	1,378
Computer generated earnings update form .....	60,529	20.00	20,176
Work Level Form (NCS Form 04-3G) .....	1,533	25.00	639
Work Level Form (NCS FORM 04-3P) .....	4,134	25.00	1,722
Work Schedule Form (NCS 05-4G) .....	1,533	10.00	256
Work Schedule Form (NCS 04-4P) .....	4,134	10.00	689
Benefits Collection Form (NCS 04-5G) .....	660	180.00	1,980
Benefits Collection Form (NCS 04-5P) .....	2,150	180.00	6,450
Summary of Benefits (Benefit update form SO-1003) is computer generated .....	47,510	<sup>1</sup> 15-20	15,661
Collection not tied to a specific form (testing, QA/QM, etc.) .....	6,525	15-60	5,305

\* Only a portion of initiations result in quarterly responses. All initiations result in at least an annual response.

<sup>1</sup> Weighted average.

*Total Annualized Capital/Startup Costs:* \$0.

*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* \$0.

*Description:* The National Compensation Survey (NCS) is an ongoing survey of earnings and benefits among private firms, State, and local

government. The NCS resulted from the merger of three surveys: The NCS earnings and work level data (formerly the Occupational Compensation Survey Program), the Employment Cost Index, and the Employee Benefits Survey. Data from these surveys are critical for setting Federal white-collar salaries, determining monetary policy (as a

Principal Federal Economic Indicator), and for compensation administrators and researchers in the private sector.

The survey will collect data from a sample of employers. These data will consist of information about the duties, responsibilities, and compensation (earnings and benefits) for a sample of occupations for each sampled employer.

Data will be updated on either an annual or quarterly basis. The updates will allow for production of data on change in earnings and total compensation.

Ira L. Mills,

*Departmental Clearance Officer.*

[FR Doc. 04-23015 Filed 10-13-04; 8:45 am]

BILLING CODE 4510-24-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations: Prohibited Transaction Class Exemption T88-1; Correction

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Labor published a document in the **Federal Register** of October 6, 2004 concerning proposed extension of information collection request submitted for public comments and recommendations: Prohibited Transaction Class Exemption T88-1. The document contained incorrect information in Paragraph III. Current Actions.

**FOR FURTHER INFORMATION CONTACT:** Gerald Lindrew, 202-693-8410.

#### Correction

In the **Federal Register** of October 6, 2004, in FR Doc 04-22430, on page 59962, in the first column, correct the "Dates" caption to read:

**DATES:** Written comments must be submitted on or before December 13, 2004.

And, in the **Federal Register** of October 6, 2004, in FR Doc 04-22430, on page 59962, in the second column, correct the "Current Actions" caption to read:

#### III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on November 30, 2004. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

*Agency:* Employee Benefits Security Administration.

*Title:* Prohibited Transaction Exemption T88-1.

*Type of Review:* Extension of a currently approved collection of information.

*OMB Number:* 1210-0074.

*Affected Public:* Business or other for-profit, Not-for-profit institutions, Individuals.

*Total Respondents:* 1.

*Total Responses:* 1.

*Frequency:* On occasion.

*Estimated Total Burden Hours:* 1.

*Total Annual Costs (Operating and Maintenance):* \$0.

Dated: October 7, 2004.

Gerald B. Lindrew,

*Deputy Director, Employee Benefits Security Administration, Office of Policy and Research.*

[FR Doc. 04-23016 Filed 10-13-04; 8:45 am]

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Interstate Arrangement for Combining Employment and Wages

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the report for the Interstate Arrangement for Combining Employment and Wages, Form ETA 586.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Submit comments on or before December 13, 2004.

**ADDRESSES:** Send comments to Mary E. Montgomery, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S-4516, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693-3217 (*this is not a toll-free number*).

#### FOR FURTHER INFORMATION CONTACT:

Mary E. Montgomery, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S-4516, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693-3217 (*this is not a toll-free number*).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 3304(a)(9)(B), of the Internal Revenue Code (IRC) of 1986, requires states to participate in an arrangement for combining employment and wages covered under the different state laws for the purpose of determining unemployed workers' entitlement to unemployment compensation. The Interstate Arrangement for Combining Employment and Wages for combined wage claims (CWC), promulgated at 20 CFR part 616, requires the prompt transfer of all available employment and wages between states upon request. The Benefit Payment Promptness Standard, 20 CFR 640, requires the prompt payment of unemployment compensation including benefits paid under the CWC arrangement. The ETA 586 report provides the ETA/Office of Workforce Security with information necessary to measure the scope and effect of the CWC program and monitor the performance of each state in responding to wage transfer requests and the payment of benefits.

##### II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the proposed extension of the report for the Interstate Arrangement for Combining Employment and Wages, ETA 586. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the address section of this notice.

### III. Current Actions

This information is necessary in order for ETA to analyze program performance, know when corrective action plans are needed and to target technical assistance resources. Without this report, it would be impossible for the ETA to identify claims and benefit activity under the CWC program and carry out the Secretary's responsibility for program oversight.

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration.

*Title:* Interstate Arrangement for Combining Employment and Wages.

*OMB Number:* 1205-0029.

*Agency Number:* ETA 586.

*Recordkeeping:* 3 years.

*Affected Public:* State Government.

*Cite/Reference/Form:* ETA Handbook No. 401, ETA 586.

*Total Respondents:* 53.

*Frequency:* Quarterly.

*Total Responses:* 212.

*Average Time Per Response:* 4 hours.

*Estimated Total Burden Hours:* 848.

*Total Burden Cost (Capital/Startup):* N/A.

*Total Burden Cost:* \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 7, 2004.

**Cheryl Atkinson,**

*Administrator, Office of Workforce Security.*

[FR Doc. E4-2604 Filed 10-13-04; 8:45 am]

**BILLING CODE 4510-30-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04-112]

### NASA Advisory Council, Education Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Education Advisory Committee (EAC).

**DATES:** Monday, October 25, 2004, 8:30 a.m. to 3 p.m.; and Tuesday, October 26, 2004, 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** Monday, October 25 at NASA Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, CA, Tuesday, October 26 at Ritz Carlton, 1401 South Oak Knoll, Pasadena, CA

**FOR FURTHER INFORMATION CONTACT:** Dr. Katie Blanding, Office of Education, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358-0402.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. All visitors must bring a driver's license or government identification to the Visitor Lobby of JPL. Foreign visitors must bring their passport, alien registration number, and their date and place of birth. Additionally, the general public will need to be escorted to the meeting room. The agenda for the meeting includes the following topics:

—NASA Transformation Roadmapping Initiative

—Review of the Jet Propulsion Lab's (JPL) Education Program

—Transforming Education

—NASA's Integration Plan and Role of Education

—Office of Education Division Reports on: Milestones in the Educator Astronaut Program, Explorer Schools, Explorer Institutes, Science and Technology Scholarship Program, Technology & Products, Measurements, and a Single Database System.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors to the meeting will be requested to sign a visitor's register.

**R. Andrew Falcon,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 04-23039 Filed 10-13-04; 8:45 am]

**BILLING CODE 7510-13-P**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NUREG/BR-0238, Materials Annual Fee Billing Handbook, NRC Form 628, Financial EDI Authorization, NUREG/BR-0254, Payment Methods, NRC Form 629, Authorization for Payment by Credit Card.

2. *Current OMB approval number:* 3150-0190.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

5. *The number of annual respondents:* 7,330 (10 for NRC Form 628, and 7,320 for NRC Form 629, and NUREG/BR-0254).

6. *The number of hours needed annually to complete the requirement or request:* 611 (.80 hour for NRC Form 628 and 610 hours for NRC Form 629 and NUREG/BR-0254).

7. *Abstract:* The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit cards. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC.

Submit, by December 13, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The

document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by telephone at 301-415-7233, or by Internet electronic mail to [INFOCOLLECTS@NRC.GOV](mailto:INFOCOLLECTS@NRC.GOV).

Dated at Rockville, Maryland, this 6th day of October, 2004.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

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BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Proposed Generic Communication; Establishing and Maintaining a Safety Conscious Work Environment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission is proposing to issue a regulatory issue summary (RIS) to provide the guidance for licensees on establishing and maintaining a Safety Conscious Work Environment (SCWE): that is, an environment in which employees are encouraged to raise safety concerns both to their own management and to the NRC without fear of retaliation. The agency's expectations regarding licensees establishing and maintaining a SCWE are described in the 1996 NRC Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation."

In a March 26, 2003 staff requirements memorandum, the Commission directed the staff to develop further guidance, in consultation with stakeholders, that identifies "best practices" to encourage a SCWE. The guidance document is based on the existing guidance provided in the 1996 Policy Statement, including the elements and attributes described therein of a healthy SCWE, and expands the guidance or adds new guidance where additional information would help describe practices to meet the intent of each SCWE attribute. In addition, the NRC staff held a public workshop to discuss the draft guidance document, on February 19, 2004.

On February 12, 2004, the NRC staff published an outline of this guidance document for public comment. The Commission received input from the public, in response to the **Federal Register** Notice, expressing general agreement concerning the content of the outline. However, some improvements were suggested, and the NRC staff has incorporated many of these suggestions into the guidance document developed from the outline. The NRC staff's response to each of the individual comments on the outline published on February 12, 2004, is included under "Supplemental Information—Staff Response to Comments," below.

The February 12, 2004, **Federal Register** Notice emphasized that the NRC's 1996 Policy Statement was directed to all employers, including licensees and their contractors, subject to NRC authority, and their employees. Therefore, the guidance document also applies to this broad audience. The **Federal Register** Notice also clarified that the practices outlined in the guidance document may not be practical or necessary for all employers. Rather, the purpose of the guidance is to provide information on practices which have been effective at some larger licensees to maintain or improve the work environment and ensure its employees feel free to raise safety concerns. The scope of the guidance document remains broad and the NRC staff continues to believe that not all the practices outlined in the guidance document will be practical or effective for all licensees. The guidance, in the form of a RIS, is provided below for comment. It is also available on the NRC's Web site at: <http://webwork:300/what-we-do/regulatory/allegations/scwe-guide.html>, well as in ADAMS at ML042800027.

**DATES:** Comments on the guidance document may be submitted on or before November 15, 2004. Since: (1) A detailed outline of the guidance document has previously been published for comment; (2) the NRC staff has evaluated and responded to these comments below; and (3) the Commission approved, in an August 30, 2004, Staff Requirements Memorandum, issuance of the guidance, the staff requests that any comments provided in response to this **Federal Register** Notice relate to the content of the document rather than the appropriateness of issuing the document. The staff plans to issue a final RIS containing the information in the document after reviewing and addressing any additional comments.

**ADDRESSES:** Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O-1F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

You may also e-mail comments to [nrcprep@nrc.gov](mailto:nrcprep@nrc.gov). Fax comments to: Chief, Rules and Directive Branch, U.S. Nuclear Regulatory Commission at (301) 415-5144.

**FOR FURTHER INFORMATION CONTACT:** Lisamarie Jarriel, Agency Allegations Advisor, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301)-415-8529, email [LLJ@nrc.gov](mailto:LLJ@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Staff Response to Comments

The NRC received 17 submittals providing comments suggesting changes or expressing concerns in response to the outline of the proposed industry guidance for establishing and maintaining a SCWE published in the **Federal Register** on February 12, 2004. Although most stakeholders, including representatives from both the industry and whistleblower advocates, were in general agreement concerning the content of the outline, some improvements were suggested and many have been incorporated into the draft document. The most significant comment, however, addressed whether the Agency should be producing such a document at all. Industry representatives commented that the industry, rather than the NRC, should develop the guidance. The following specific comments related to the topic of whether it is appropriate for the NRC to issue the guidance, and the NRC staff's

response to these comments, are as follows:

*Comment:* The May 1996 Policy Statement clearly set the NRC staff's expectations for development of a SCWE and placed responsibility for establishing and maintaining a SCWE on the licensees. Therefore, it is not appropriate for the NRC staff to assume responsibility for development of a "best practices" document in the area of SCWE.

*Response:* The staff notes that the Commission more recently (March 26, 2003) issued a staff requirements memorandum that specifically requested that the staff develop more guidance regarding "best practices" to encourage a SCWE. The 1996 Policy Statement did in fact place the responsibility for establishing and maintaining a SCWE on licensees, and this responsibility remains with licensees. The guidance document does not transfer the responsibility for establishing and maintaining a SCWE from licensees to the NRC; rather, the guidance document provides some tactics for establishing and maintaining a SCWE which have been successful at some licensees and may be of use to other licensees in upholding the responsibilities described in the 1996 Policy Statement.

*Comment:* "Best practices" are not enforceable nor useful for NRC inspectors.

*Response:* The NRC staff plans to issue the attached guidance in the form of a RIS, which is not a regulatory requirement but is an established method of providing guidance to the industry. The purpose of the document is to provide guidance to the industry, rather than to dictate regulatory requirements or to serve as a required standard for use during NRC inspections.

*Comment:* Several comments were received that expressed a concern that any guidance developed by the NRC would be "defacto" regulatory requirements in this area, and that guidance from the NRC on "best practices" for establishing and maintaining a SCWE would create the impression that the guidance provided by the NRC would become the standard for an acceptable program. One commenter indicated that a requirement that surveys and interviews be performed on a regular basis would provide little benefit and would demand a substantial use of licensee resources.

*Response:* As noted above, the NRC staff plans to issue the guidance document on establishing and maintaining SCWE as a RIS, which is not a regulatory requirement, but

provides guidance to the industry on this important topic. While a perception may exist that such guidance documents are "defacto" requirements, the NRC staff clarified in the document that some of the practices outlined in the guidance may not be practicable or appropriate for every NRC licensee or contractor depending on the existing work environment and the size, complexity, or hazards of licensed activities. This statement should clarify that the information in the guidance document is not a requirement.

*Comment:* The industry has developed and is using guidance from Nuclear Energy Institute (NEI) 97-05<sup>1</sup>; therefore, additional guidance from the NRC is not necessary.

*Response:* The NRC staff has reviewed NEI 97-05, Revision 1 and a draft of Revision 2, and concurs that both revisions contain elements that are important to establishing and maintaining a SCWE. However, the staff noted some important distinctions in comparing the NEI document to the proposed NRC guidance on establishing and maintaining a SCWE, including: (1) A difference in the scope of the documents' emphasis on problem identification and resolution processes, in that the NEI document focuses on the effectiveness of the Employee Concerns Program while the NRC document more broadly addresses the effect of all problem identification and resolution processes on the SCWE; (2) additional details in the NRC document regarding several practices, such as management behaviors and oversight of contractor activities, which may impact the SCWE at licensed facilities; (3) additional details in the NRC document regarding the content of SCWE training; (4) inclusion of a discussion of several important and complex issues in the NRC document which are not contained in the NEI document, such as the effect of incentive programs and 360 degree appraisal programs on the SCWE; and (5) guidance in the NRC document with respect to processes to help detect and prevent discrimination, or mitigate perceptions of discrimination, which is not included in the NEI document.

In addition to the above comments which generally related to the appropriateness of the NRC staff issuing a guidance document on establishing and maintaining a SCWE, the following comments were received:

*Comment:* Several comments were received regarding a concern that

issuance of a guidance document on best practices to establish and maintain a SCWE may give the impression that the practices in the document are all inclusive, when in fact additional practices may be effective or necessary at some sites, and some intangible issues, such as trust and management turnover, may significantly impact the SCWE. In addition, a concern was raised that issuing a best practices document for establishing and maintaining a SCWE may give the impression that the practices in the document have been objectively demonstrated to be effective when in fact they have not.

*Response:* The NRC staff agrees that not all of the practices outlined in the guidance document may be practicable or appropriate for every licensee or contractor and that practices not included in the guidance may also be effective in establishing and maintaining a SCWE. The NRC staff also agrees that additional licensee efforts beyond the practices in the guidance may be necessary to establish or improve a SCWE. The staff has revised the title of the document from one that refers to "best practices" to further emphasize the unique nature of each licensee's work environment and has added language to emphasize that the practices in the document may not be practical or effective at all licensees, and that additional practices may be helpful or necessary to establish or maintain a SCWE at some facilities. In addition, several comments requested the addition of specific items to the outline. The specific comments were:

*Comment:* More emphasis needs to be placed on the interpretation of data obtained and its impact on safe operations.

*Comment:* More emphasis needs to be placed on the effectiveness of communications and teamwork as effective tools for the resolution of identified problems.

*Comment:* The results of industry benchmarking (positive and negative attributes) should be included in the guidance.

*Comment:* Industry Lessons learned should be included in the SCWE training.

*Response:* Emphasis was added to the guidance document as requested in the first of these comments, but for the others the NRC staff determined that the guidance already adequately addressed these topics.

*Comment:* Two comments were received which indicated that the NRC staff should develop a SCWE performance indicator or minimal acceptable standards for SCWE.

<sup>1</sup> NEI 97-05, "Nuclear Power Plant Personnel-Employee Concerns Program-Process Tools In A Safety Conscious Work Environment," Rev. 1, January 2002.

*Response:* The NRC staff has considered developing an inspection process and assessment tools to evaluate the broader area of safety culture, which, as described in the guidance document, relates to a "safety-first focus". SCWE is an attribute of safety culture. In an August 30, 2004, staff requirements memorandum, the Commission indicated that the staff should consider developing tools that allow inspectors to rely on more objective findings in the area of Safety Culture. The Commission specifically approved enhancing the reactor oversight process' treatment of cross-cutting issues to more fully address Safety Culture, and to allow for more agency action as the result of the identification of a cross-cutting issue regarding Safety Culture. Implementing this direction from the Commission may involve development of some form of a performance indicator for SCWE or Safety Culture. However, the Commission to date has not approved development of a regulation or "minimal acceptable standards" in the area of safety culture or SCWE.

*Comment:* A question was posed in one comment regarding whether the guidance was intended to address only SCWE or the broader topic of Safety Culture. The commenter pointed out that the Commission did not specifically direct that the staff develop guidance about Safety Culture, but requested that the staff monitor developments abroad to ensure that the Commission remains informed about these efforts and their effectiveness.

*Response:* The guidance document only addresses the topic of SCWE, rather than Safety Culture, and the NRC staff clarified this point in the draft guidance document. The staff notes that the commenter was correct in stating that the Commission did not direct that the staff develop guidance about Safety Culture, but requested that the staff monitor developments abroad to ensure that the Commission remains informed about these efforts and their effectiveness.

*Comment:* The NRC has not previously issued "best practices" documents for other areas where it has a regulatory requirement or other interest.

*Response:* While the NRC staff has not routinely issued "best practices" documents for other areas where it has a regulatory requirement or interest, the staff notes that the Commission specifically directed the staff in the March 26, 2003 staff requirements memorandum, to develop further guidance that would identify "best practices" to encourage a SCWE. While

issuing documents which identify "best practices" is not routine for the NRC staff, it is also not prohibited by NRC policy, and many NRC guidance documents, while not titled "best practices", incorporate industry practices which have been effective.

The following two comments were received regarding a concern that the NRC guidance related to a review of lessons learned/case studies may involve privacy and attorney-client privilege information:

*Comment:* The Draft Best Practices document suggests that licensees conduct self assessments of SCWE by periodically evaluating and assessing information from areas/organizations that may contribute or negatively effect the SCWE, including from legal counsel. Any such assessment that seeks information contained in attorney's files could compromise the attorney-client privilege.

*Comment:* The Draft Best Practices document suggests that licensees provide continuous training for employees, managers, and supervisors. Such training, according to the Draft Best Practices Document, should include "lessons learned/case studies". However, in the past the NRC has expressed concern that training involving cases studies might compromise the confidentiality of complainants who made allegations or engaged in litigation at that facility. The NRC should clarify its expectations with respect to the use of case studies.

*Response:* The NRC staff acknowledges that information in licensees' attorney's files and some information in case studies could contain attorney-client privilege or privacy information and that review of such information by individuals completing self assessments or release of the information in a report of a self assessment would not be appropriate. Nonetheless, the NRC staff continues to believe that review of some legal documentation and case studies may be beneficial during self assessments of SCWE and training. As such, the NRC revised the sections of the guidance document which discuss review of legal documentation and inclusion of case studies in training to reflect that licensees should take into consideration privacy and attorney-client privilege considerations during such reviews.

*Comment:* The Draft Best Practices document suggests that SCWE be reinforced by demonstrated management behavior that promotes employee confidence in raising and resolving concerns, including incentive programs. The use of incentive awards may be inappropriate in a SCWE

toolbox and the use of this tool needs to be left to individual licensees.

*Response:* As indicated in the guidance document on establishing and maintaining a SCWE, the NRC staff recognizes that some of the practices outlined in the guidance may not be practicable or appropriate for every NRC licensee. The information in the guidance is provided for licensees' consideration when developing or enhancing existing SCWE programs, or attempting to identify and correct potential problems with a program. As indicated in the guidance, the NRC staff believe that incentive programs may encourage reporting of safety concerns, and the guidance specifies that licensees should ensure that incentive programs do not inadvertently discourage raising safety concerns.

*Comment:* The Draft Best Practices document suggests that the volume and trend of such statistics as NRC allegations, NRC retaliation allegations, anonymous concerns, and of internally raised concerns be used as performance indicators. Reliance upon such statistics may be misleading. As the NRC has previously recognized, alleged bring concerns to the NRC for various reasons, including self-serving reasons and reasons unrelated to the work environment at a nuclear plant.

*Response:* While alleged raise concerns to the NRC for differing reasons, the NRC staff believes that, in general, the volume and trend of NRC allegations, anonymous concerns, and internally raised concerns can be used as performance indicators. While some individuals may bring concerns to the NRC and the licensee for reasons other than problems with the work environment, statistics such as the number and type of allegations received involve the total licensee alleged population and therefore may be a reflection of the status of the general work environment. Clarification was added to the guidance document to indicate that no single indicator is sufficient in identifying weaknesses in the SCWE, nor are there absolute measures that indicate an unhealthy environment. This clarification emphasizes that while such information may be indicative of the status of the work environment, further analysis is needed to identify the causes of changes in the number and types of allegations received.

*Comment:* Certain language in the Draft Best Practices document encourages licensees to encroach on contractors' areas of responsibilities regarding SCWE. For example, it suggests that a licensee should oversee contractor SCWE-related matters,

including contractor SCWE-related programs, procedures, and training. In addition, the Draft Best Practices document suggests that licensee management should be involved in contractor proposed changes to employment conditions. Such actions could be an inappropriate encroachment on a contractor's ability to manage its own employees and could expose licensees to liability. NRC should clarify that contractors, and not licensees, are responsible for the content and effectiveness of the SCWE program within the contractor's organization.

*Response:* The NRC staff disagrees that licensee oversight of a contractor's SCWE activities is an inappropriate encroachment on a contractor's ability to manage its own employees. Rather, the Commission's long-standing policy has been to hold licensees responsible for compliance with NRC requirements, regardless of whether the licensee uses a contractor to complete licensed activities. Since the actions of contractors can affect the SCWE at NRC licensed facilities, licensees are responsible for ensuring that their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation. While the NRC staff agrees that contractors are responsible for the content and the effectiveness of the SCWE within the contractor's organization, licensees are also responsible for overseeing contractor activities which may impact the SCWE at NRC licensed facilities.

*Comment:* The Draft Best Practices document suggests that senior management review proposed employee actions (above oral reprimand) before they are taken to confirm that there are no elements of retaliation involved. Requiring senior management to review every disciplinary action would pose an unnecessary burden upon management.

*Response:* As noted in the response above, the staff plans to issue the document on establishing and maintaining a SCWE as guidance for the industry rather than as a regulatory requirement. In addition, the NRC staff clarified in the document that some of the practices in the outline may not be practical or appropriate for every licensee, depending on the work environment and/or the size, complexity, and hazards of licensed activities. As such, the guidance does not require that senior management at every NRC licensee review every disciplinary action. Rather, the guidance suggests that review of disciplinary actions, such as those above an oral reprimand, may be beneficial at some licensed facilities. Review of

disciplinary actions has benefited the work environment at some licensee facilities. The NRC staff also revised the language to the guidance document to provide disciplinary actions above an oral reprimand as one potential threshold to consider rather than as the suggested threshold. This language should further emphasize that licensees should customize SCWE practices to suit the needs of the facility.

The comments are available in their entirety on the Office of Enforcement's Web page at: <http://www.nrc.gov/what-we-do/regulatory/allegations/scwe-comments.html>.

#### **Supplementary Information—Draft NRC Regulatory Issue Summary: Guidance for Establishing and Maintaining a Safety Conscious Work Environment**

##### **Addressees**

All U.S. Nuclear Regulatory Commission (NRC) licensees, applicants for licenses, holders of certificates of compliance, and their contractors.

##### **Intent**

Although not required by regulation, licensees and other employers subject to NRC authority are expected to establish and maintain a safety conscious work environment (SCWE, pronounced "squee"). The NRC is issuing this regulatory issue summary (RIS) to supplement guidance for fulfilling this expectation. The guidance describes a number of practices that may facilitate the efforts of licensees and others in developing and maintaining a SCWE. The NRC recognizes that some of the practices described in this document may not be practical for every licensee, depending on the existing work environment and/or the size, complexity, and hazards of the licensed activities. Although this RIS requires no action or written response, all NRC addressees are encouraged to review and consider the contents of this RIS when evaluating whether a SCWE exists at their facility.

##### **Background Information**

In April 2000, the Nuclear Regulatory Commission's Executive Director of Operations chartered the Discrimination Task Group (DTG) to evaluate issues associated with matters covered by the NRC's employee protection standards, including SCWE. The DTG recommendations were provided to the Commission in September 2002 in SECY-02-0166. In a March 26, 2003, staff requirements memorandum (SRM) for SECY-02-0166, the Commission directed the staff to take certain actions in the area of SCWE and safety culture,

including providing the guidance herein. Regarding these two terms, SCWE and safety culture, there has been some confusion historically. Many use the terms interchangeably. They are, in fact, distinct, but related concepts. In the Commission's January 24, 1989 "Policy Statement on the Conduct of Nuclear Power Operations," safety culture is described as "the necessary full attention to safety matters" and "the personal dedication and accountability of all individuals engaged in any activity which has a bearing on the safety of nuclear power plants." A strong safety culture is also often described as having a "safety-first focus." Attributes include the principles of safety-over-production, procedural adherence, and conservative decisionmaking. The willingness of employees to identify safety concerns, *i.e.*, SCWE, is also an important attribute of a strong safety culture.

In July 1993, the agency reassessed the NRC's program for protecting allegers against retaliation. Retaliation is prohibited by NRC regulations in Parts 19, 30, 40, 50, 60, 61, 63, 70, 72, 76, and 150. It was recommended that an agency policy be developed to emphasize that licensees and their contractors are responsible for achieving and maintaining a work environment which is conducive to the reporting of concerns without fear of retaliation. In May 1996, the NRC issued such a policy, "Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation (61 FR 24336 or [www.nrc.gov/what-we-do/regulatory/allegations/scwe-frn-5-14-96.pdf](http://www.nrc.gov/what-we-do/regulatory/allegations/scwe-frn-5-14-96.pdf)). A SCWE is defined by the NRC as an environment in which "employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation." The NRC also recognizes that, aside from fear of retaliation, other matters can affect an employee's willingness to identify safety concerns, such as the effectiveness of the licensee's processes for resolving concerns and senior management's ability to detect and prevent retaliatory actions. The NRC policy statement, therefore, addresses these attributes of a SCWE as well. The guidance provided by this policy, however, is very broad.

In SRM-SECY-02-0166 the Commission directed the staff to develop further guidance, in consultation with stakeholders, that would identify "best practices" for encouraging a SCWE. The Commission indicated that the proposed guidance should emphasize training of managers on their obligations under the employee protection regulations and should make

recommendations about the content of the training in this important area. In the 1996 policy statement, the NRC acknowledged that although the statement and principles, described therein, apply to all licensees and other employers subject to NRC authority, some of the suggestions, programs, or steps that might be taken to improve the quality of the work environment (e.g., establishment of a method to raise concerns outside of the normal management structure such as an employee concerns program) may not be practical for every licensee or other employer, depending on factors such as the number of employees, complexity of operations, potential hazards, and the history of allegations made to the NRC. Similar to the suggestions and principles in the 1996 policy statement, the practices described in this document may not be practical for every licensee, depending on the existing work environment and/or the size and complexity and hazards of the licensed activities. For example, some of the practices in this guidance document may not be applicable for very small licensees or other affected employers that have only a few employees and a very simple management structure.

#### Summary of Issue

An environment where employees feel free to raise safety concerns may contribute to a reduced risk associated with licensed activities and the use of radioactive materials. Attachment 1, "Establishing & Maintaining a Safety Conscious Work Environment," is provided as guidance to licensees, applicants, and contractors on developing and maintaining a SCWE in response to the Commission's March 2003 directive. Current industry guidance, Nuclear Energy Institute (NEI) 97-05, "Nuclear Power Plant Personnel—Employee Concerns Program—Process Tools In a Safety Conscious Work Environment" ([www.nei.org/documents/Nuclear\\_Employee\\_Concerns\\_Tools.pdf](http://www.nei.org/documents/Nuclear_Employee_Concerns_Tools.pdf)) contains elements that are important to establishing and maintaining a SCWE as well, and complements the guidance provided by this RIS. However, NEI 97-05 primarily focuses on establishing an effective employee concerns program (ECP), an alternative process for reporting safety concerns. Attachment 1 addresses SCWE more broadly as it applies to all problem identification and resolution processes.

The NRC recognizes that some of the practices outlined in this guidance may not be practicable or appropriate for every NRC licensee or contractor, depending on the existing work

environment, and/or the size or complexity, and the hazards of the licensed activities. In addition, practices not included in this guidance may be equally effective in establishing and maintaining a SCWE. The NRC staff emphasizes that licensees are responsible for establishing and maintaining a SCWE and that implementation of the guidance may not improve a SCWE without additional efforts by site management. However, the NRC believes that the elements in this guidance could be helpful to NRC licensees, applicants, and their contractors.

The guidance in Attachment 1 is intended to supplement existing information that was communicated in the 1996 policy statement. The supplemental elements of a SCWE summarized in this attachment were developed utilizing information obtained from reactive inspections of problematic licensee programs, as well as reviews of successful progressive SCWE programs, and insights obtained during discussions with nuclear industry professionals in this field.

The attached document provides guidance with respect to (1) encouraging employees to raise safety concerns, including incentive programs and communication tools, (2) SCWE training content and periodicity, (3) ECP and ombudsman programs, (4) tools to assess the SCWE, including performance indicators, behavioral observations, and surveys, (5) contractor awareness of SCWE principles and expectations, and (6) processes to help detect and prevent discrimination, or mitigate perceptions of discrimination.

#### Backfit Discussion

This RIS requires no action or written response and is, therefore, not a backfit under 10 CFR 50.109, 70.76, 72.62, or 76.76. Consequently, the staff did not perform a backfit analysis.

#### Federal Register Notification

A notice of opportunity for public comment on this RIS was published in the **Federal Register** (xx FR xxxxx) on {date}. Comments were received from {indicate the number of commentors by type}. The staff considered all comments that were received. The staff's evaluation of the comments is publicly available through the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML042800027.

#### Small Business Regulatory Enforcement Fairness Act of 1996

The NRC has determined that this action is not subject to the Small

Business Regulatory Enforcement Fairness Act of 1996.

#### Paperwork Reduction Act Statement

This RIS does not request information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 44 U.S.C. 3501 *et seq.*

#### Attachment 1: Establishing & Maintaining a Safety Conscious Work Environment

##### Background

In July 1993, the Nuclear Regulatory Commission's Executive Director for Operations directed that a team reassess the NRC's program for protecting allegers against retaliation. The team evaluated the process that was in place in 1993 and sought comments from other NRC offices, other Federal agencies, licensees, former allegers and the public. One recommendation from the 1993 effort was the development of an agency policy to emphasize that licensees and their contractors are expected to achieve and maintain a work environment which is conducive to the reporting of concerns without fear of retaliation.<sup>2</sup>

On May 14, 1996, the NRC issued a policy statement<sup>3</sup> to express the Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. Licensees, contractors, subcontractors, and other employers in the nuclear industry are responsible for maintaining a safety conscious work environment (SCWE). This policy statement is applicable to the NRC-regulated activities of all NRC licensees, certificate holders, and their contractors and subcontractors.

In April 2000, the Nuclear Regulatory Commission's Executive Director for Operations chartered the Discrimination Task Group (DTG) to evaluate issues associated with matters covered by the NRC's employee protection standards, including SCWE and SCWE training for managers—the subject of a petition for rulemaking, PRM-30-62, submitted on August 13, 1999. The DTG

<sup>2</sup> "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation, NUREG 1499, January 1994."

<sup>3</sup> "Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation," **Federal Register** Notice May 14, 1996, (Volume 61, Number 94).

recommendations<sup>4</sup> were provided to the Commission in September 2002. In a March 26, 2003, staff requirements memorandum,<sup>5</sup> the Commission directed the staff, in consultation with stakeholders, to develop further guidance that identifies best practices for encouraging a SCWE. On February 19, 2004, the staff met with stakeholders to discuss an expanded outline of best practices prepared by the staff based on the guidance contained in the 1996 policy statement. Comments on the outline were also solicited in a February 12, 2004, **Federal Register** notice. The comments that were received during the meeting and in response to the **Federal Register** notice were considered in preparing this guide.

## Introduction

The guidance in this document is intended to supplement existing information that was communicated in the 1996 policy statement. The supplemental elements of a SCWE summarized in this document were developed using information obtained from reactive inspections of problematic licensee programs, reviews of successful progressive SCWE programs, and insights obtained during discussions with nuclear industry professionals, including individuals who provide training to the industry on the subject and attorneys who have represented licensees and whistleblowers in proceedings.

The NRC recognizes that some of the practices outlined in this guidance may not be practicable or appropriate for every NRC licensee or contractor, depending on the existing work environment and/or the size, complexity, and hazards of the licensed activities. In addition, practices not included in this guidance may be effective in establishing and maintaining a SCWE. The NRC staff emphasizes that licensees are responsible for establishing and maintaining a SCWE and that implementation of this guidance may not improve a SCWE without additional efforts by site management. However, the NRC believes that the elements in this guidance could be helpful to NRC licensees and their contractors when developing or enhancing existing SCWE programs, or when attempting to

identify and correct potential problems in a program.

## Elements of a Safety Conscious Work Environment

### *Effective Processes for Problem Identification and Resolution*

Effective processes for problem identification and resolution are essential to ensuring the safe use of nuclear materials and operation of facilities. The following guidance discusses attributes of the work environment that encourage individuals to look for and articulate safety concerns and effectively and efficiently address and resolve the concerns. The approach taken to develop the SCWE and to implement the appropriate processes described below will depend on several factors, including the size of the licensee, applicant, or contractor.

#### A. Employees Are Encouraged To Raise Safety Concerns

**SCWE Policy.** A SCWE policy statement which (a) is applicable to employees and contractors, (b) asserts that it is everyone's responsibility to promptly raise concerns, and (c) makes clear that retaliation for doing so will not be tolerated helps establish a SCWE and helps communicate senior management's expectations for maintaining it. In addition, the policy may include:

- A statement that, to the extent appropriate, employees are allowed and encouraged to use work hours to report concerns;
- Sanctions for retaliation by supervisors, managers, or peers;
- Expectations for management behavior that fosters employee confidence in raising concerns;
- Information on the various avenues available for raising concerns;
- The rights of employees to raise concerns externally; and
- A commitment to provide SCWE training.

**SCWE Training.** SCWE training for managers, supervisors, and employees helps reinforce the principles outlined in the licensee's SCWE policy. The training given to managers and employees should include applicable laws, regulations and policies underlying SCWE expectations.

- Managers and employees should know what "protected activities" are, besides raising safety concerns.

The term "protected activity" has been broadly interpreted by the Department of Labor and the U.S. Courts. A protected activity is defined by NRC regulation as including, but not limited to:

- Providing the Commission or employer information about alleged or possible violations of the Atomic Energy Act, the Energy Reorganization Act, or requirements imposed under either statute;

- Refusing to engage in any practice made unlawful under either statute or the requirements, if the employee has identified the alleged illegality to the employer;

- Requesting the Commission to institute action against the employer for the administration or enforcement of these requirements;

- Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding a provision of either statute;

- Assisting or participating in, or being about to assist or participate in, these activities.

- Managers and employees should also know what an "adverse action" is. An "adverse action" is generally defined as an adverse change of the terms, conditions, or benefits of the employee's work. Adverse employment actions may include changes in employment status, regardless of whether the individual's pay is affected, and threats to employment.

- They also need to know the meaning of "retaliation" under the NRC's regulations.

An adverse action is deemed retaliatory if it is taken because the individual was engaged in a protected activity.

The training given should also include the consequences for deviations from applicable laws, regulations, and policies underlying SCWE expectations.

The training should identify appropriate gateways for employees and contractors to identify concerns (manager, quality assurance programs, corrective action programs, appeal processes, alternative processes for raising concerns such as a licensee Employee Concerns Programs or an ombudsman program, NRC, and DOL). The training should include a description of how each program works, and the role of the manager in each program.

The training should include expectations for management behavior. For example, managers should be expected to make themselves available to the workforce by various means, including an "open-door" policy in the office and when managers are in the field. Managers also need to be sensitive to employees' potential reluctance to raise concerns and may need to protect employees' identity or the identity of others involved. Basic listening skills, effective ways to seek input, and

<sup>4</sup> SECY-02-0166, "Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues," September 12, 2002.

<sup>5</sup> Staff Requirements—SECY-02-0166—"Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues", March 26, 2003.

expressions of appreciation to those who raise concerns are other behaviors to be encouraged in managers. Managers should be knowledgeable of and periodically use various media instruments to communicate their SCWE principles. Management should establish timeliness goals for responding to concerns, commensurate with safety significance, and provide periodic updates to the individuals who identified the concerns. Managers should evaluate the effectiveness of their responses to determine whether the responses adequately addressed employees' concerns. Managers should ensure that operational or maintenance goals do not make supervisors less receptive to safety concerns, particularly concerns which may result in significant costs or schedule delays. Finally, training for managers should include information to help them identify and address signs of a "chilled environment," that is, an environment in which employees are afraid to raise safety concerns for fear of retaliation.

Managers who model positive traits of availability, receptiveness, sensitivity, encouraging communications, timeliness, and responsiveness associated with a SCWE will promote employee confidence in identifying and resolving concerns. Managers who have exhibited success in this area should consider training or mentoring other managers in an effort to duplicate the success.

Similarly, expectations for employees' behavior should also be included in the employees' training. Consider emphasizing the following employee behaviors during training:

- Individual responsibility for reporting concerns;
- Clear communication of the concern and confirmation of understanding with the person receiving the concern;
- Willingness to suggest resolutions to concerns and participate to in their resolution;
- Followup to ensure the concern is adequately addressed;
- Need for every employee to demonstrate respect for others who identify concerns.

Initial training of recently hired employees or recently promoted managers should be conducted as soon as practicable and refresher training for existing staff should be conducted annually or more frequently, as determined by the needs and complexity of the organization. Annual refresher training for employees and managers should review key points from initial training and include lessons

learned, as appropriate, from successes and/or problem areas.

*SCWE Incentive Programs.* An incentive program can be developed which provides recognition and rewards for individual and team efforts in identifying and/or resolving safety issues. In addition, implementation of site-wide bonus and incentive programs which reflect safety objectives over production goals may also encourage reporting of safety concerns. However, some care should be taken to ensure that incentive programs do not inadvertently discourage reporting concerns (e.g., some employees may not want recognition).

Employee errors can have a detrimental effect on safety and efforts should be made to reduce the frequency and significance of errors. An environment that is conducive to the self-reporting of errors will allow errors to be identified more quickly and can reduce the potential significance of some errors. While it is important to hold employees accountable for their errors, licensee personnel management practices, to the extent practicable, should consider that actions against personnel who self-report errors can, in some circumstances, discourage employees from raising concerns, near misses, etc. Consider using self-identification and prompt, effective corrective actions as mitigating circumstances for consideration when addressing personnel matters involving self-identified errors.

#### B. Management Is Promptly Notified of Concerns

Aside from the practices discussed above concerning policies, training, and incentive programs designed to create a work environment where employees feel free to raise safety concerns without fear of retaliation, there are other behaviors and processes which may help employees promptly identify and notify management of concerns. Employees and management that demonstrate an open and questioning attitude by asking "why" and "what if" type questions help to ensure concerns are promptly identified. Processes for identifying concerns should be accessible and user-friendly. A corrective action program which is flexible in its use of paper forms and/or terminals, conveniently placed throughout the facility, also helps ensure prompt notification of safety concerns. An accessible and approachable management team further motivates employees to report concerns, including communications that ensure an understanding of the concerns prior to their proposed resolution and

inspection. As appropriate, employees should be allowed and encouraged to spend needed work hours to report concerns.

#### C. Concerns Are Promptly Prioritized and Reviewed

Safety should be a primary factor in the concern prioritization scheme and in determining the breadth and depth of the evaluation. Effective communication plans should ensure the sharing of information between affected departments so that the potential impact of the identified concerns on safety can be appropriately assessed. In addition, management and employees should develop expectations concerning timeliness to complete the evaluation and resolution of issues. The process for screening issues should include a review for operability and reportability as applicable. For significant conditions adverse to quality, the evaluation should be sufficient to identify the root and contributing causes of the issue. In addition, the root cause analysis should address both the extent of the condition and the cause of the issue.

#### D. Concerns Are Appropriately Resolved

Timeliness of the corrective actions should be commensurate with the safety significance of the issue. Processes should be in place to ensure that appropriate actions are taken in response to all conditions adverse to quality. For significant conditions adverse to quality, corrective actions should be taken to address the root causes, contributing causes, and the extent of the condition caused by the identified concern.

#### E. Timely Feedback Is Provided to the Concerned Individual

Timely feedback should be provided at appropriate points during the concern resolution process. The individual receiving the information may need to discuss the concern with the employee raising the concern in order to understand the issue and its safety significance. Additional feedback may be necessary during the evaluation when it is apparent that resolution may take longer than anticipated. When the evaluation is complete, it is important to followup with the concerned employee to share proposed actions to address the issue, if appropriate. The most effective feedback process is one which is sufficiently flexible to permit a concerned employee who wants anonymity to obtain feedback.

#### F. Appeal Process for Concerns

An appeal process to ensure that issues were thoroughly addressed (e.g., differing professional opinion or alternative dispute resolution processes) can provide added assurance that concerns are appropriately resolved.

#### G. Self-Assessments of Problem Identification & Resolution (PI&R) Processes

It is a good practice to periodically evaluate the adequacy and timeliness of responses, as well as the satisfaction of the concerned individual with the response and process. In addition, a self-assessment should address whether employees feel free to raise issues using the various processes employed by the licensee and whether these processes are viewed as effective, and why or why not. An assessment should include an appraisal of the effectiveness of the root cause analyses for significant issues and the effectiveness of associated corrective actions. Management should have a plan to promptly review the findings of such self-assessments and implement appropriate corrective actions.

#### H. An Alternative Process to Line Management

To address the situation where an individual wishes to raise a concern to someone other than their management or through the corrective action program, an alternative process, such as an employee concerns program, can be useful. Given the nature of many of the issues one may wish to raise outside of line management, such a process should ensure identity protection and/or anonymity to the extent appropriate. Such an alternative process should be accessible in multiple ways (e.g., walk-ins, hot lines, drop boxes) to the extent practical, given the size of the organization. In considering the physical location of the personnel operating the alternative process, one should consider both their accessibility to the workforce and their visibility. An overly visible office may not allow discreet visits. Personnel training programs, advertising posters, and facility news articles help provide notification of the process. Like concerns brought to the corrective action program, concerns brought to the alternative program must receive appropriate operability and reportability reviews and be properly prioritized using safety as a primary factor for determining the breadth, depth, and timeliness of the evaluation. While independent from line organizations involved in the concerns, the process is most effective if the personnel doing the

evaluations are directly accountable to senior management. Senior management provides appropriate support and resources, including staffing and access to necessary documents and materials to conduct inspections. The process should provide timely feedback on the status and resolution of concerns and status reports to senior management with analyses of program data and observations.

#### *Tools To Assess the SCWE*

Information gathered from the following tools should be considered for program enhancements, training enhancements, coaching and counseling opportunities, organizational changes, and survey topic suggestions. As with the processes for problem identification and resolution, discussed above, the choice of tools and their usefulness will depend on several factors, including the size of the licensee, applicant, or contractor, and the complexity and hazards of the licensed activities.

##### A. Lessons Learned Evaluations

It may be useful to periodically evaluate information from pertinent organizations and processes which may contribute to or negatively affect the SCWE to identify enhancements or adjustments to the organizations and processes. The organizations and processes with pertinent information may include the primary process for raising concerns (e.g., correction action program), an alternative process for raising concerns (e.g., employee concerns program, or ombudsman), human resources (regarding work environment concerns, etc.), legal counsel (regarding Department of Labor files, etc.), and/or regulatory affairs (regarding NRC findings or observations). Discussions about specific documentation or events should take into consideration privacy and attorney-client restrictions. Lessons learned from external organizations can also be useful.

##### B. Benchmarking

Participation in applicable industry forums or peer-group assessments of other SCWE programs where ideas and practices are exchanged and various SCWE elements compared can also provide valuable insights.

##### C. Performance Indicators

Parameters that help indicate the effectiveness of the SCWE training and problem identification and resolution processes should be identified and monitored. For example, the number

and trend of NRC allegations<sup>6</sup> (available only for large licensees) compared to the number and trend of internally raised concerns may be an indication of employee willingness to raise concerns internally. Similarly, the percent of anonymous concerns raised may indicate employee willingness to raise concerns without fear of retaliation.

Licensee effectiveness in preventing retaliation claims may be indicated by the number and trend of NRC retaliation allegations (available only for large licensees) compared to the number and trend of internally raised retaliation concerns.

The percent of employees with a questioning attitude and a willingness and ability to raise safety concerns may be indicated by comparing the number of risk-significant concerns that are self-revealed, self-identified, or externally identified by INPO, NRC, OSHA, etc., to the total number of concerns.

Finally, the backlog and age of concerns may indicate the effectiveness of processes for resolving concerns.

No single indicator is sufficient in itself to identify weaknesses in the SCWE, nor are there absolute measurements that indicate an unhealthy environment. Nonetheless, monitoring the trends in various characteristics of the SCWE with performance indicators like those mentioned above may provide insights into the strengths and weaknesses of the SCWE at a site.

##### D. Survey and Interview Tools

Survey instruments and interview questionnaires implemented by organizations independent of the groups being surveyed or interviewed can be useful tools and complement other tools used to assess the SCWE.

Pre-survey or pre-interview communications are a very important part of such tools. Communications with the workforce prior to the implementation of the survey or interview should include a request for participation, a statement of the need for input, a promise to protect participants' identity, the intended use of the gathered information, and a promise to share the results with the workforce.

Regular employee business hours should be made available to conduct surveys or interviews.

The scope of SCWE surveys should include the following:

<sup>6</sup> Although the NRC makes statistical information regarding allegations publicly available and available to some licensees, this information does not include information that could be used to identify a concerned individual who has raised their concern to NRC.

- Awareness of company policies and practices with regard to raising safety concerns and avenues available for raising concerns;

- Management behaviors encouraging the workforce to raise safety concerns;
- Workers' willingness to raise safety concerns;
- Effectiveness of the processes available (normal and alternative) for raising concerns;
- Management's ability to detect and prevent retaliation for raising safety concerns.

Space should be provided on surveys for written comments.

Survey or interview follow-up action plans should be developed to address findings that are specific to work groups or generic to the facility. In addition, management should commit to share the results with the workforce and share action plans to address findings. The results of surveys or interviews may indicate employee beliefs, attitudes, and satisfaction with key SCWE attributes, as well as ways to improve the SCWE.

#### E. Direct Observations

Direct observations of individuals' behavior provides information regarding the effectiveness of any SCWE training. Management behaviors observed may indicate whether a supervisor is receptive to concerns and supports and rewards employees for raising concerns. Direct observation of employees in the work environment can provide valuable insights into the employees' questioning attitude and willingness to challenge perceived unsafe behavior.

#### F. Exit Interviews and Surveys

Exit interviews and surveys, conducted to facilitate the identification of safety issues from exiting employees, provide an opportunity to capture concerns an individual may not have been comfortable raising while working at the facility. These activities should include follow-up mechanisms for exiting employees who want to be informed of the resolution of their concerns. Employees' identities should be protected.

#### G. 360-Degree Appraisals

Consideration should be given to the implementation of a "360-degree" appraisal program, where employees are asked to provide feedback on manager SCWE behavior.

#### *Improving Licensee Contractor Awareness of SCWE Principles*

The Commission's longstanding policy is to hold its licensees responsible for compliance with NRC requirements, even if licensees use

contractors for products or services related to NRC-regulated activities. Thus, licensees are responsible for ensuring that their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation. In considering whether enforcement action should be taken against licensees for the actions of their contractor, the NRC considers, among other things, the extent and effectiveness of the licensee's involvement with and oversight of the contractor's environment for raising concerns.

#### A. Communicating Licensee SCWE Expectations to Contractors

Licensee SCWE expectations of contractor responsibilities as they relate to creating and maintaining a SCWE should be communicated to contractors providing components, equipment, materials, or other goods and services related to NRC-regulated activities. It should be the licensee's expectation that the contractors and their subcontractors are aware of applicable regulations. Furthermore, a licensee may want to communicate to its contractors and subcontractors that the licensee expects them to demonstrate that either an effective program exists that prohibits discrimination against contractor employees for engaging in protected activity and fosters a SCWE, or they adopt and comply with the licensee's SCWE program for their employees.

#### B. Licensee Oversight of Contractor SCWE Activities

Aside from communicating its SCWE-related expectations to their contractors, licensees may wish to oversee contractor SCWE-related activities. Such oversight may include:

- Reviewing contractor programs and processes to prohibit discrimination and foster a SCWE;
- Assessing the contractor management's commitment to SCWE principles through document review or behavioral observations;
- Reviewing contractor training, both for content and for effectiveness;
- Monitoring the contractor's actions to address concerns, such as reviewing contractor investigations to determine the need to conduct independent licensee investigations;
- Evaluating actions, if any, the contractor takes to mitigate the potential impact of employment decisions or organizational changes on the SCWE.

#### C. Licensee Management Involvement in Contractor Cases of Alleged Discrimination

Given that the SCWE is most challenged when changes are made to the employment conditions of the workforce, it can be very beneficial to licensees to monitor such changes when proposed or executed by the contractor. Licensee oversight in this area might include evaluating contractor processes for making changes to employment conditions, such as disciplinary policies or reduction-in-force plans, to ensure the processes are well-defined, defensible, and communicated to the workforce in advance of their implementation.

Furthermore, licensee management should evaluate contractor-proposed changes to employment conditions to ensure the proposed changes follow defined processes and are nonretaliatory. The licensee can also assess whether the contractor has taken into consideration the potential effect that their actions might have on the SCWE, and, if appropriate, actions to mitigate the impact.

Finally, contractor changes to employment conditions that are alleged to be or are likely to be perceived as retaliatory should be reviewed to ensure the changes are not retaliatory or would otherwise effect the SCWE adversely.

#### D. Contractor SCWE Training

Contractor SCWE training can be provided by the contractor or licensee. As with the training given to licensee employees, the contractor training should cover the laws, regulations, and policies underlying the licensee's SCWE expectations; the licensee's governing SCWE policy; the avenues available to contractor staff to raise concerns; and the licensee's expectations for contractor management and employee behavior regarding raising safety concerns. The contractor training should also include an explanation of licensee contractual rights to oversee the contractor's SCWE. Training should be conducted during business hours.

#### *Involvement of Senior Management in Employment Actions*

Management should ensure that programs and processes involving changes to employment conditions, such as disciplinary policies or reductions-in-force plans, are well-defined, defensible, and communicated to the workforce prior to their implementation. An effective way for senior licensee management to prevent retaliatory actions by their supervisory staff is to review proposed employment

actions, such as those above an oral reprimand, before the actions are taken to determine whether any of the factors of retaliation are present.

The factors of retaliation are as follows:

- Protected activity—Has the individual against whom the action is being taken engaged in a protected activity?
- Adverse action—Is an adverse employment action being proposed?
- Licensee or contractor knowledge of protected activity—Such knowledge can be attributed to other than the individual's direct supervisor.
- Relationship between the adverse action and the protected activity—Is there evidence that the adverse action is being proposed because of the protected activity?

Senior management review of such employment actions should ensure that programs or processes are being followed to ensure actions are well-founded and nonretaliatory. In addition, the review should ensure that the proposed action comports with normal practice within the limits allowed by the defined process and is consistent with actions taken previously. The review should assess whether the supervisor requesting the action exhibits any sign of unnecessary urgency. The employee's prior performance assessments and the proposed action should be consistent or inconsistencies should be justified and documented.

Finally, an assessment should be done to determine what, if any, effect the employment action may have on the SCWE. If management determines that the action, despite its legitimacy, could be perceived as retaliatory by the workforce, mitigating actions should be considered to minimize potential chilling effects on raising safety issues.

Such mitigating actions may include (1) the use of holding periods during which the proposed employment action is held in abeyance while further evaluations are completed; (2) communicating with the workforce about the action being taken, with appropriate consideration of privacy rights; (3) reiterating the SCWE policy; and (4) explaining the action to the affected employee(s) and clearly articulating the nonretaliatory basis for the action. After an employment action is taken, management should initiate a review of the facts and, if warranted, reconsider the action that was taken. If retaliation is alleged, the licensee should assure that the appropriate level of senior management is involved in efforts to minimize a potential chilling effect that the employment action may have on raising safety issues.

### Definitions

**Adverse action**—An action initiated by the employer that detrimentally affects the employee's terms, conditions, or privileges of employment. Such actions include but are not limited to termination, demotion, denial of a promotion, lower performance appraisal, transfer to a less desirable job, and denial of access.

**Alternative dispute resolution (ADR)**—Refers to a number of processes, such as mediation and facilitated dialogues, that can be used to assist parties in resolving disputes.

**Corrective action program (CAP)**—A formal system for issues that may require remedial action that are raised by employees that tracks issues from their identification through evaluation and resolution. The issues are usually prioritized according to the relative safety significance.

**Differing professional opinion (DPO)**—A formal alternative process which provides an avenue of appeal for an employee to disagree with a position taken by management.

**Employee concerns program (ECP)**—An alternative process to line management and the CAP for employees to seek an impartial review of safety concerns. Many ECPs handle a variety of concerns and may act as brokers seeking resolution on behalf of the employees.

**Hostile work environment**—An intentional discriminatory work environment that is either pervasive and regular or acute but severe and detrimentally affects the employee because of protected activity.

**Memorandum of understanding (MOU)**—A written agreement which describes how organizations, offices, or agencies will cooperate on matters of mutual interest and responsibility.

**Performance indicators (PI)**—A series of predetermined measured items which usually provide managers with insight into what may be occurring within an organization and give an early sign of problems that, if acted upon, could relieve stress within an organization.

**Protected activity**—Includes initiating or testifying in an NRC or DOL proceeding regarding issues under the NRC's jurisdiction, documenting nuclear safety concerns, the internal or external expression of nuclear safety concerns, and refusing to engage in any practice made illegal under the Atomic Energy Act or the Energy Reorganization Act if the employee has identified the alleged illegality to the employer.

**Safety conscious work environment (SCWE)**—An environment in which employees are encouraged to raise safety

concerns both to their own management and to the NRC without fear of retaliation.

Dated at Rockville, Maryland, this 7th day of October, 2004.

For the Nuclear Regulatory Commission.

**Francis M. Costello,**

*Acting Chief, Operating Reactor Improvements, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-23005 Filed 10-13-04; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Approval of Existing Information Collection: Rule 17a-8, SEC File No. 270-225, OMB Control No. 3235-0235.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension and approval of the existing collection of information discussed below.

Rule 17a-8 [17 CFR 270.17a-8] under the Investment Company Act of 1940 (the "Act") is entitled "Mergers of affiliated companies." Rule 17a-8 exempts certain mergers and similar business combinations ("mergers") of affiliated registered investment companies ("funds") from section 17(a) prohibitions on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its

terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a-8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 600 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 4,200 hours.

This estimate represents an increase of 3,600 hours from the prior estimate of 600 hours. The increase results from an increase in the estimated average annual hour burden of meeting the requirements of 17a-8.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be \$15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be \$50,000. The Commission staff estimates that each year approximately 10 mergers with unregistered entities occur and approximately 15 funds hold shareholder votes that would not otherwise have held a shareholder vote to comply with state law. The total annual cost burden of meeting these requirements is estimated to be \$900,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or e-mail to:

*David.Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 8, 2004.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E4-2605 Filed 10-13-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17f-4, SEC File No. 270-232, OMB Control No. 3235-0225.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval of the collection of information discussed below.

Section 17(f) of the Investment Company Act of 1940 (the "Act")<sup>1</sup> permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities ("securities depositories"), subject to rules adopted by the Securities and Exchange Commission ("Commission"). Rule 17f-4 under the Act specifies the conditions for the use of securities depositories by funds<sup>2</sup> and custodians.

The Commission adopted rule 17f-4 in 1978 to reflect the custody practice and commercial law of that time. In particular, the rule was designed to be compatible with the 1978 revisions to Article 8 of the Uniform Commercial Code ("UCC") ("Prior Article 8").<sup>3</sup> Custody practices have changed substantially since 1978, and the drafters of the UCC approved major amendments to Article 8 in 1994 to reflect these changes ("Revised Article 8").<sup>4</sup> While Prior Article 8 reflected

expectations that depository practice would involve registering investors' interests in securities on the issuer's own books, Revised Article 8 recognizes that under current practice, an investor usually maintains its securities through an account with a broker-dealer, bank or other financial institution ("securities intermediary").<sup>5</sup> Revised Article 8 has significantly clarified the legal rights and duties that apply in indirect holding arrangements, and every State has enacted Revised Article 8 into law.

On February 13, 2003, the Commission adopted amendments to reflect the recent changes in custody practices and commercial law.<sup>6</sup> The amendments updated and simplified the rule, and substantially eased rule 17f-4's reporting, recordkeeping, and other compliance requirements. Most prominently, the amended rule eliminated the confirmation, segregation, and earmarking requirements.<sup>7</sup> In place of these detailed requirements, amended rule 17f-4 required funds to modify their contracts with their custodians or securities depositories to add two provisions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a "securities intermediary" to obtain and thereafter maintain financial assets.<sup>8</sup> Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.<sup>9</sup>

The Commission staff estimates that 4,866 respondents (including 4,711 active registered investment companies, 130 custodians, and 25 possible securities depositories) are subject to the requirements in rule 17f-4. The rule is

("Revised Article 8"), Prefatory Note at I.B., C., and D.

<sup>5</sup> Revised Article 8, *supra* note 3, section 8-102(a)(14) and Prefatory Note at III.A. (defining a "securities intermediary").

<sup>6</sup> See *supra* note 2.

<sup>7</sup> Previously, the custodian was required to send the fund a written confirmation of each transfer of securities to or from the fund's account with the custodian (the "confirmation requirement"). The custodian also had to maintain the fund's securities in a depository account for the custodian's customers that is separate from the depository account for the custodian's own securities (the "segregation requirement") and had to identify on the custodian's records a portion of the total customer securities as attributed to the fund (the "earmarking requirement"). Revised Article 8 made these custodial compliance requirements unnecessary to protect fund assets.

<sup>8</sup> Rule 17f-4(a)(1). This provision simply incorporates into the rule the standard of care provided for by section 504(c) of Revised Article 8 when the parties have not agreed to a standard.

<sup>9</sup> If a fund deals directly with a depository, similar requirements apply to the depository.

<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> As amended in 2003, rule 17f-4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. See Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) [68 FR 8438 (Feb. 20, 2003)]. The term "fund" is used in this Notice to mean all registered investment companies.

<sup>3</sup> Article 8 of the UCC governs the ownership and transfer of investment securities. See Uniform Commercial Code, 1978 Official Text with Comments, Article 8, Investment Securities (West 1978) ("Prior Article 8"); Use of Depository Systems by Registered Management Companies, Investment Company Act Release No. 10053 (Dec. 8, 1977) [42 FR 63722 (Dec. 19, 1977)] at nn. 4-7, 9, 12 and accompany text (citing provisions of Prior Article 8).

<sup>4</sup> See Uniform Commercial Code, Revised Article 8—Investment Securities (With conforming and Miscellaneous Amendments to Articles 1, 4, 5, 9, and 10) (1994 Official Text with Comments)

elective, but most if not all funds use depository custody arrangements.<sup>10</sup>

The Commission staff estimates that, on an annual basis, about 471 funds<sup>11</sup> spend an average of 2 hours annually complying with the contract requirements of rule 17f-4. (e.g., signing contracts with additional custodians or securities depositories) for a total of 942 burden hours.

Rule 17f-4 requires that a custodian, upon request, provide a fund with any available reports on its internal accounting controls and financial strength. The Commission staff estimates that 130 custodians spend 12 hours annually in transmitting such reports to funds. In addition, approximately 47 funds (i.e., one percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. The Commission staff estimates that, for each of the 47 funds, depositories spend 12 hours annually transmitting reports to the funds. The total annual burden estimate for compliance with rule 17f-4's reporting requirement is therefore 2,124 hours.

If a fund deals directly with a securities depository, rule 17f-4 requires that the fund implement internal control systems reasonably designed to prevent unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officer's instructions). The Commission staff estimates that 47 funds spend 10 hours annually implementing systems to prevent unauthorized officer's instructions, resulting in 470 burden hours for this requirement under rule 17f-4.

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's paperwork requirement is 3,536 hours.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

<sup>10</sup> The Commission staff estimates that more than 97 percent of all funds now use depository custody arrangements.

<sup>11</sup> Commission staff estimates that about 10 percent of all funds approve new depository custody arrangements yearly or a fund changes custodians (or securities depositories) every 10 years.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 8, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2606 Filed 10-13-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Rule 11Ac1-4, SEC File No. 270-405, OMB Control No. 3235-0462.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1-4 (17 CFR 240.11Ac1-4) under the Securities Exchange Act of 1934 requires specialists and market makers to publicly display a customer limit order when that limit order is priced superior to the quote that is currently being displayed by the specialist or market maker. Customer limit orders that match the bid or offer being displayed by the specialist or market maker must also be displayed if the limit order price matches the national best bid or offer. It is estimated that approximately 585 broker and dealer respondents incur an aggregate burden of 228,735 hours per year to comply with this rule.

Rule 11Ac1-4 does not contain record retention requirements. Compliance with the rule is mandatory. Responses

are not confidential. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the SEC, by sending an e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), and (ii) R. Corey Booth, Director/Chief Information Officer. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 4, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2607 Filed 10-13-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26628; File No. 812-13114]

### Security Benefit Life Insurance Company, et al.; Notice of Application

October 7, 2004.

**AGENCY:** Securities and Exchange Commission (the "Commission" or "SEC").

**ACTION:** Notice of application for amended order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to permit, under specified circumstances, the recapture of certain credit enhancements ("Credit Enhancements").

**APPLICANTS:** Security Benefit Life Insurance Company ("Security Benefit"); First Security Benefit Life Insurance and Annuity Company of New York ("First Security Benefit," and collectively with Security Benefit, the "SBL Insurers"); SBL Variable Annuity Account XVII ("Variable Account XVII"); and Security Distributors, Inc. ("SDI").

**SUMMARY OF APPLICATION:** On December 11, 2001, the Commission issued an order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit, under specified circumstances, the recapture of certain Credit Enhancements applied to the contract value of contractholders under certain contracts (the "Current Order"). See In the Matter of Security Benefit Life Insurance Company, *et al.*, Investment Company Act Release No. 25317 (Dec. 11, 2001) (order).

Applicants seek an amendment to the Current Order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit the recapture of certain Credit Enhancements applied to the contract value of contractholders under circumstances not contemplated by the Current Order under: (i) The new flexible premium deferred variable annuity contract that Security Benefit issues through Variable Account XVII (the "New Contract"), and (ii) any future variable annuity contracts that would be funded by any other separate account of the SBL Insurers supporting variable annuity contracts (collectively with Variable Account XVII, the "Separate Accounts") or any other separate accounts that will be established in the future by the SBL Insurers to support variable annuity contracts (a "Future Account") and offered by any of the SBL Insurers ("Future Contracts"), provided that any such Future Contract is substantially similar in all material respects to the New Contract. Applicants also request relief under the order extend to any Separate Accounts or Future Accounts which may support Future Contracts that are substantially similar in all material respects to the New Contract described in the application.

**FILING DATES:** The application was filed on August 3, 2004, and amended and restated on September 10, 2004, and September 28, 2004.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on November 1, 2004, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Amy J. Lee, Esq., Associate General Counsel, Security Benefit Life Insurance Company, One Security Benefit Place, Topeka, Kansas 66636-0001.

**FOR FURTHER INFORMATION CONTACT:** Sonny Oh, Staff Attorney, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch at 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

#### Applicants' Representations

1. Security Benefit is a life insurance company organized under the laws of the State of Kansas. Security Benefit offers life insurance policies and annuity contracts, as well as financial and retirement services. It is authorized to conduct life insurance and annuity business in the District of Columbia and all states except New York. Together with its subsidiaries, Security Benefit has total funds under management of approximately \$12.5 billion.

2. First Security Benefit is a stock life insurance company organized under the laws of the State of New York on November 8, 1994. First Security Benefit offers variable annuity contracts in New York and is admitted to do business in that state. First Security Benefit is a wholly-owned subsidiary of Security Benefit Group, Inc., a financial services holding company that is ultimately controlled by Security Benefit Mutual Holding Company.

3. Variable Account XVII was established on November 24, 2003, as a segregated asset account of Security Benefit. Variable Account XVII is registered with the Commission as a unit investment trust (File No. 811-21481). Security Benefit is the legal owner of the assets in such Separate Account. Variable Account XVII is currently divided into 29 subaccounts ("Subaccounts"). Each Subaccount invests exclusively in shares of a corresponding open-end management investment company ("Series"), certain of which Series are managed by Security Management Company, LLC, a wholly-owned subsidiary of Security Benefit. Variable Account XVII funds the variable benefits available under the New Contract. Security Benefit has filed a registration statement on Form N-4 under the 1940 Act and the Securities Act of 1933, as amended (the "1933 Act") to register interests in Variable Account XVII under the New Contract (File No. 333-111589).

4. SDI serves as the principal underwriter for variable annuity contracts currently funded by the Separate Accounts (each a "Contract" and collectively, the "Contracts") issued

by the SBL Insurers, including the New Contract, but does not serve as principal underwriter for Contracts funded by the T. Rowe Price Variable Annuity Account of each of the SBL Insurers. SDI is registered as a broker/dealer with the Commission under the Securities Exchange Act of 1934, as amended, and is a wholly-owned subsidiary of Security Benefit Group, Inc., a financial services holding company, which is ultimately controlled by Security Benefit Mutual Holding Company.

5. Contractholders may allocate amounts paid to Security Benefit as consideration for the New Contract ("Purchase Payments") to each of the Subaccounts. Amounts allocated to the Subaccounts will increase or decrease in dollar value depending on the investment performance of the underlying mutual fund in which such Subaccount invests. Contractholders bear the investment risk for amounts allocated to a Subaccount. A contractholder's initial Purchase Payment must be at least \$25,000. Thereafter, the contractholder may choose the amount and frequency of Purchase Payments, except that the minimum subsequent Purchase Payment is \$25.

6. A contractholder may transfer Contract Value among the Subaccounts, subject to certain restrictions as described in the New Contract prospectus. At any time before the date when annuity payments are to begin ("Annuity Start Date"), a contractholder may surrender the New Contract for its Contract Value less any applicable withdrawal charges and any uncollected premium taxes ("Withdrawal Value"). A contractholder may also make partial withdrawals, including systematic withdrawals, from Contract Value, subject to certain restrictions described in the New Contract prospectus. The New Contract provides for several annuity options on either a variable basis, a fixed basis, or both.

7. A contractholder may return the New Contract within the "Free-Look Period," which is generally a ten-day period beginning when the contractholder receives the New Contract. In this event, Security Benefit will refund any Contract Value allocated to the Subaccounts, plus any charges deducted from such Contract Value, less the then current value of any Initial Credit Enhancements (as defined herein). Contractholders will also receive a refund of any amounts that may have been deducted to pay for state premium taxes and/or other taxes. Security Benefit will refund Purchase Payments allocated to the Subaccounts

rather than Contract Value in those states where it is required to do so.

8. If the contractholder dies prior to the Annuity Start Date while the New Contract is in force, Security Benefit will pay the death benefit proceeds, less any uncollected premium tax, to the beneficiary designated by the contractholder ("Designated Beneficiary") upon receipt of due proof of the contractholder's death and instructions regarding payment to the Designated Beneficiary.

9. Security Benefit does not deduct sales load from Purchase Payments

before allocating them to a contractholder's Contract Value. If a contractholder withdraws Contract Value, Security Benefit may deduct a contingent deferred sales charge (which may also be referred to as a withdrawal charge), which varies depending on how long a contractholder's Purchase Payment has been held under the New Contract. The withdrawal charge will be waived on withdrawals to the extent that total withdrawals in any 12-month period, measured from the Contract Date (as defined in the New Contract prospectus) including systematic

withdrawals, do not exceed the Free Withdrawal amount. The Free Withdrawal amount is equal in the first Contract Year, to 10 percent of Purchase Payments made during the year and, in any subsequent Contract Year, to 10 percent of Contract Value as of the first day of that Contract Year. The withdrawal charge applies to the portion of any withdrawal, consisting of Purchase Payments that exceeds the Free Withdrawal amount.

10. The withdrawal charge under a New Contract is calculated according to the following schedule:

"Age" of payment in years	1	2	3	4	5	6	7	8
Withdrawal Charge* .....	8%	7.45%	6.5%	5.5%	5%	5%	4%	0%

\* The withdrawal charge applicable to the variable annuity contracts described in the Current Order was deducted in an identical manner as the withdrawal charge under the New Contract. The withdrawal charge schedule set forth in the Current Order, however, differed from that of the New Contract and was as follows: Year 1—7%; Year 2—7%; Year 3—6%; Year 4—5%; Year 5—4%; Year 6—3%; Year 7—2%; and Year 8 and later—0%.

11. Security Benefit deducts a daily charge for mortality and expense risks assumed by Security Benefit under the New Contract equal to 0.85% on an annual basis, of each Subaccount's average daily net assets. During the Annuity Period, the mortality and expense risk charge may increase to 1.25% under certain annuity options. Security Benefit deducts a daily charge for the risks it assumes under the applicable rider equal to an annual rate of 0.95% of each Subaccount's average daily net assets. Security Benefit will deduct the rider charge for the life of the New Contract beginning on the Contract Date and ending on the Annuity Start Date if one of Annuity Options 1 through 4, 7 or 8 is elected. Security Benefit will deduct the rider charge for the life of the New Contract if Annuity Option 5 or 6 is elected. Security Benefit deducts a daily administration charge under the New Contract equal to an annual rate of 0.15% of each Subaccount's average daily net assets to compensate for the expenses associated with administration of the New Contract and operation of the Subaccounts. Because various states and municipalities impose a tax on premiums on annuity contracts received by insurance companies, Security Benefit assesses a premium tax charge to reimburse itself for premium taxes that it incurs in connection with a New Contract.

12. The New Contract makes available three riders as follows: (1) The Recurring Rewards Rider; (2) the Future Rewards Rider; and (3) the Flexible Rewards Rider (collectively, the "Credit Enhancement Riders"). Each Credit Enhancement Rider makes available a

Credit Enhancement, which is an amount added to Contract Value by Security Benefit. A Contractholder may purchase one such Rider only at issue. When purchased, a Credit Enhancement will be added to Contract Value for each Purchase Payment made in the first Contract Year (an "Initial Credit Enhancement") in an amount equal to 2% of such Purchase Payments for the Recurring Rewards Rider; 5% of such Purchase Payments for the Future Rewards Rider; and 4% of such Purchase Payments for the Flexible Rewards Rider. Any Initial Credit Enhancement will be allocated among the Subaccounts in the same proportion as the Purchase Payment is allocated.

13. After the Initial Credit Enhancement, each Credit Enhancement Rider provides an additional Credit Enhancement, which is a percentage of Contract Value on the date applied ("Additional Credit Enhancement"). Additional Credit Enhancements will be allocated among the Subaccounts in the same proportion as Contract Value on the date of receipt of the Additional Credit Enhancement. There is no vesting schedule attached to the Additional Credit Enhancements, which vest immediately. As a result, there is no recapture of Additional Credit Enhancements in the event of a full or partial withdrawal or payment of a death benefit under the New Contract.

14. The Recurring Rewards Rider provides a 2% Additional Credit Enhancement at every third Contract anniversary that occurs prior to the Annuity Start Date on the basis of the Contract Value at that time, as long as the New Contract is in force. The Future Rewards Rider provides a 2%

Additional Credit Enhancement on the tenth Contract anniversary and on every second Contract anniversary thereafter that occurs prior to the Annuity Start Date on the basis of the Contract Value at that time, as long as the New Contract is in force (a "Future Credit Enhancement"). The amount of the Future Credit Enhancement will be paid on the tenth, 12th, and 14th Contract anniversaries, and so on; provided that any such anniversary occurs prior to the Annuity Start Date. The Flexible Rewards Rider provides a one-time Additional Credit Enhancement (the "Flexible Credit Enhancement") on the "Election Date." The "Election Date" is the date in which an Owner's request to elect the Flexible Credit Enhancement is received by Security Benefit. The Election Date must be after the fifth Contract anniversary and prior to the Annuity Start Date while the New Contract is in force. Security Benefit will add the Flexible Credit Enhancement on the Election Date in an amount equal to 4% of Contract Value on that date.

15. Security Benefit will recapture Initial Credit Enhancements on withdrawals only to the extent that total withdrawals in a Contract Year, including systematic withdrawals, exceed the Free Withdrawal amount for that Contract Year. As a result, a contractholder may withdraw up to the Free Withdrawal amount during each Contract Year without any recapture of Initial Credit Enhancements that have not yet vested. Also, the Free Withdrawal amount will reduce the percentage of unvested Initial Credit Enhancements that is recaptured in the

event of withdrawals that exceed the Free Withdrawal amount.

16. In the event of a full or partial withdrawal, Security Benefit will recapture all or part of any Initial Credit

Enhancement that has not yet vested. An amount equal to 1/7 of the Initial Credit Enhancement will vest as of each anniversary of the New Contract's date of issue and the Initial Credit

Enhancement will be fully vested at the end of seven years from that date. The percentage of Initial Credit Enhancements that has vested as of each Contract anniversary is set forth below:

**CONTRACT ANNIVERSARY/PERCENTAGE OF INITIAL CREDIT ENHANCEMENTS VESTED AS OF ANNIVERSARY**  
[In percent]

1	2	3	4	5	6	7
14.28	28.57	42.85	57.14	71.42	85.71	100

The amount to be forfeited in the event of a withdrawal is equal to a percentage of the Initial Credit Enhancement that has not yet vested. The percentage is determined for each withdrawal as of the date of the withdrawal by dividing: (i) The amount of the withdrawal, including any withdrawal charges, less any Free Withdrawal amount, by (ii) the Contract Value immediately prior to the withdrawal. If a contractholder exercises the right to return the New Contract during the Free-Look period, Contract Value will be reduced by the then current value of any Initial Credit Enhancements applied. Additionally, death benefit proceeds will exclude any Initial Credit Enhancements applied during the 12 months prior to the date of the contractholder's death.

17. The New Contract provides for a death benefit upon the death of the contractholder prior to the Annuity Start Date. The death benefit proceeds will be the death benefit reduced by any uncollected premium tax. If a contractholder dies before the Annuity Start Date, the amount of the death benefit will be the greater of: (1) The sum of all Purchase Payments (not including Initial or Additional Credit Enhancements), less any reductions caused by previous withdrawals, including withdrawal charges ("Purchase Payment Death Benefit"); or (2) the Contract Value on the date due proof of death and instructions regarding payment are received by Security Benefit (less the amount of any Initial Credit Enhancements applied during the 12 months prior to the date of the contractholder's death) ("Contract Value Death Benefit"). If a contractholder dies prior to the Annuity Start Date and due proof of death and instructions regarding payment are not received by Security Benefit at its Home Office within six months of the date of the contractholder's death, the death benefit will be the Contract Value Death Benefit. Only Initial Credit Enhancements applied during the 12 months prior to the date of the

contractholder's death are subject to recapture in the event of the contractholder's death. In addition, if a contractholder dies prior to the Annuity Start Date and after the fifth Contract anniversary and no Flexible Credit Enhancement has been applied, Security Benefit will apply the Flexible Credit Enhancement to Contract Value as of the date that the death benefit is processed.

18. The relief sought in the application is intended to permit the SBL Insurers to: (i) Deduct from any full or partial withdrawal a proportionate amount of any Initial Credit Enhancement that has not yet vested; and (ii) deduct from any death benefit, except the Purchase Payment Death Benefit, the amount of any Initial Credit Enhancement applied during the 12 months prior to the date of the contractholder's death. The requested relief would also apply to any Future Contract funded by the Separate Accounts or Future Accounts that recapture Initial Credit Enhancements; provided that any such Future Contract is substantially similar in all material respects to the New Contract.

#### **Applicants' Legal Analysis**

1. Applicants seek exemptive relief pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to the extent deemed necessary to permit the SBL Insurers to recapture under the New Contract or under Future Contracts that are substantially similar in all material respects to the New Contract: (1) the amount of any Initial Credit Enhancement that has not yet vested from the amount of any full or partial withdrawal during the first seven Contract Years; and (2) the amount of any Initial Credit Enhancement applied during the 12 months prior to the date of the contractholder's death from the amount of any death benefit, except the Purchase Payment Death Benefit.

2. Subsection (i) of Section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance

contracts, or to the sponsoring insurance company and principal underwriter of such separate account, except as provided in paragraph (2) of that subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless "(A) such contract is a redeemable security."

3. Section 2(a)(32) of the 1940 Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate shares of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants state that the amount paid in the event of a full or partial withdrawal excludes a proportionate amount of any Initial Credit Enhancement conditionally applied to the contractholder's New Contract in the seven years prior to the date of the full or partial withdrawal. The amount of any death benefit, which is based upon Contract Value, does not include the amount of any Initial Credit Enhancement conditionally applied to the contractholder's New Contract in the 12 months prior to the date of the contractholder's death. In each instance, the contractholder arguably is not receiving his or her proportionate share of the applicable Separate Account's then-current net assets. Applicants submit, however, that the recapture of the amount of any Initial Credit Enhancement conditionally applied to the contractholder's New Contract during the seven-year period beginning on the New Contract's date of issue or the 12-month period prior to the date of the contractholder's death, as described in the application, would not deprive a contractholder of his or her proportionate share of the issuer's current net assets. Until or unless the Initial Credit Enhancement is vested, Security Benefit retains a right and interest in the Initial Credit

Enhancement. Thus, when Security Benefit recaptures any Initial Credit Enhancement (or any portion thereof) in instances in which it pays a Withdrawal Value or death benefit, it is simply retrieving its own assets. Because a beneficiary's interest in the Initial Credit Enhancement is not vested, the beneficiary is not deprived of a proportionate share of the net assets of the applicable Separate Account. Similarly, because a contractholder's interest in the Initial Credit Enhancement is not unconditionally vested, the contractholder is not deprived of a proportionate share of the net assets of the applicable Separate Account if an Initial Credit Enhancement is fully or partially recaptured in connection with a withdrawal.

5. Applicants submit that annuity contracts, unlike life insurance contracts, are not intended to insure against the risk of the premature death of the insured. Instead, annuity contracts are intended to provide an income stream to the contractholder or a named beneficiary, for the life of the annuitant or for a period of years. The risk to an insurer under an annuity contract typically is that the annuitant lives longer than the insurer's prediction.

6. According to the Applicants, if Initial Credit Enhancements are applied unconditionally to the death benefit under an annuity contract before a minimum period of time has elapsed from the time that an Initial Credit Enhancement has been credited, the insurer runs the risk of anti-selection. "Anti-selection" can generally be described as a risk that persons obtained coverage based on knowledge that a contingency that triggers the payment of an insurance benefit is likely to occur, or is to occur shortly. The insurer runs the risk that, for example, a terminally ill contractholder will make a large Purchase Payment in order to leverage the amount of money he or she is able to transfer to the beneficiary. The Applicants believe that requiring a year to elapse before an Initial Credit Enhancement may be included in a death benefit is an appropriate means to ensure that the New Contract is not used as a risk-free vehicle for persons to leverage the amount of money they wish to transfer to a beneficiary.

7. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as

contemplated by Section 22(a). Rule 22c-1 thereunder prohibits a registered investment company issuing a redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. Applicants state that Security Benefit's recapture of the Initial Credit Enhancement (or portion thereof) with respect to the New Contract in instances in which: (i) A withdrawal is made and fewer than seven years have elapsed since the issue date of the New Contract, or (ii) a death benefit is paid, other than a Purchase Payment Death Benefit, and fewer than 12 months have elapsed between the time that the Initial Credit Enhancement has been applied to the New Contract and the death of the contractholder, might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the applicable Subaccount of a Separate Account. In other words, because any such Initial Credit Enhancement paid by Security Benefit is immediately added, on a conditional basis, to the Contract Value of certain contractholders, and further because these amounts are allocated to certain Subaccounts for the benefit of the participating contractholder, the net asset value of each Subaccount arguably is affected by these credits.

9. Applicants contend, however, that the recapture of the Initial Credit Enhancement under the circumstances described in the application should not be deemed to be a violation of Section 22(c) and Rule 22c-1. To the extent that the recapture practices described in the application are considered to be technical violations of these provisions, Applicants request relief from Section 22(c) and Rule 22c-1 in order to recapture Initial Credit Enhancements as discussed above for the New Contract and substantially similar Future Contracts to the extent that a SBL Insurer has provided Initial Credit Enhancements to a Contractholder within (i) seven years of a full or partial withdrawal; or (ii) 12 months of the Contractholder's death before the Annuity Start Date where the death benefit is not a Purchase Payment Death Benefit.

10. Applicants represent that it is not administratively feasible to track the Initial Credit Enhancements in the Separate Accounts after the Initial Credit Enhancements are applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Initial Credit Enhancements. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the contractholder's Contract Value did not include any Initial Credit Enhancement. Security Benefit nonetheless represents that the New Contract's fees and charges, in the aggregate, are reasonable in relation to services rendered, the expenses expected to be incurred, and the risks assumed by Security Benefit.

11. Applicants assert that the recapture of the Initial Credit Enhancement does not involve either of the practices that Rule 22c-1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices.

12. Applicants submit that the proposed recapture of the Initial Credit Enhancement poses no such threat of dilution. To effect a recapture of an Initial Credit Enhancement, Security Benefit redeems (and First Security Benefit will redeem) interests in a contractholder's Subaccount(s) at a price determined on the basis of the current accumulation unit value of each of the Subaccounts of the Separate Account in which the contractholder's Contract Value is allocated. The amount recaptured in the event of a full or partial withdrawal or death benefit, will be equal to the amount of the Initial Credit Enhancement paid out of the General Account assets of Security Benefit. That amount will be redeemed at the current accumulation unit value of the applicable Subaccount(s) as of the date of receipt of the death claim, or withdrawal request, in proper order. Thus, no dilution will occur upon the recapture of an Initial Credit Enhancement.

13. Applicants also submit that the second practice that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit Enhancement.

14. Applicants submit that their request for an order for the exemptive relief described above is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. An order that would be applicable to Future Accounts created by SBL Insurers would reduce administrative expenses and maximize the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in the application. Having Applicants file additional exemptive applications would impair Applicants' ability to effectively take advantage of business opportunities that may arise. Further, Applicants undertake that Future Contracts funded by the Separate Accounts, or by Future Accounts, which seek to rely on the order issued pursuant to the application will be substantially similar in all material respects to the New Contract.

15. Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E4-2597 Filed 10-13-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27900]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 6, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for

public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 28, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 28, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Portland General Electric Company (70-10250)

Portland General Electric Company ("Portland General"), 121 SW Salmon Street, Portland, Oregon 97204, a wholly owned electric utility company subsidiary of Enron Corp. ("Enron"), a registered holding company, has filed an application under sections 9(a)(1) and 10 of the Act.

Portland General proposes to purchase ("Purchase") the coal handling facility ("Facility") located at its Boardman Coal Plant ("Boardman Plant") in eastern Oregon. Portland General, an Oregon corporation, is an integrated electric utility engaged in the generation, purchase, transmission, distribution, and retail sale of electricity in the State of Oregon. Portland General also sells electricity and natural gas in the wholesale market to utilities and power marketers located throughout the western United States. Portland General's service area is located entirely within Oregon and includes 51 incorporated cities, of which Portland and Salem are the largest, within a state-approved service area allocation of approximately 4,000 square miles. Portland General estimates that at the end of 2003 its service area population was approximately 1.5 million, comprising about 43% of the state's population. At December 31, 2003, Portland General served approximately 754,000 retail customers. Portland General has approximately 26,085 miles of electric transmission and distribution lines and owns 1,957 MW of generating capacity. Portland General also has long-term power purchase contracts for 510 MW from four hydroelectric

projects on the mid-Columbia River and power purchase contracts of one to twenty-six years for another 740 MW from Bonneville Power Administration, other Pacific Northwest utilities, and certain Native American tribes. As of December 31, 2003, Portland General's total firm resource capacity, including short-term purchase agreements, was approximately 3,883 MW (net of short-term sales agreements of 3,910 MW). Portland General's peak load in 2003 was 3,351 MW.

Portland General is a reporting company under the Securities Exchange Act of 1934 and it files annual, quarterly and periodic reports with the Commission. As of and for the year ended December 31, 2003, Portland General and its subsidiaries on a consolidated basis had operating revenues of \$1,752 million, net income of \$58 million, retained earnings of \$545 million, and assets of \$3,372 million.

Portland General is regulated by the Oregon Public Utility Commission ("OPUC") with regard to its rates, terms of service, financings, affiliate transactions and other aspects of its business. Additionally, the Federal Energy Regulatory Commission regulates the company's activities in the interstate wholesale power markets.

The Boardman Plant is a coal-fueled plant located in Boardman, Oregon with capacity of 600 MW. Portland General owns a 65% undivided interest in the Boardman Plant and is the operator of the plant. The remaining 35% is owned by Idaho Power Company, Pacific Northwest Generating Cooperative, and General Electric Credit Corporation through Bank of New York (the successor to J Henry Schroeder Bank & Trust Company) (collectively, "Boardman Plant Co-Owners"), none of whom are affiliated with Portland General.

Portland General requests authority to acquire the Facility, consisting of the machinery, equipment, mechanical and electrical equipment, fixtures, tangible personal property and other property, real and personal, constructed and installed for the unloading, transfer, storage, handling and crushing of coal for the Boardman Plant. Currently, Portland General is the sole lessee of the Facility under a lease agreement ("Lease Agreement") under a leverage financing transaction ("Financing Transaction") entered into in 1979. The Facility is owned by a trust ("Trust"), the trustee of which is Wells Fargo Bank N.A. ("Owner-Trustee") and the beneficiary of which is ICON/Boardman Facility LLC ("Owner Participant"), a participant in the Financing Transaction. Under the Lease

Agreement, Portland General is responsible for the operation and maintenance of the Facility.<sup>1</sup>

In January 2004, Portland General extended the Lease Agreement through 2010. More recently, the company and Owner Participant negotiated a purchase price for the Facility, assuming that the transaction closes by October 29, 2004. The purchase price would be between \$20 million and \$35 million. If the closing is delayed but takes place on or before November 30, 2004, the purchase price will be increased for each day after October 29, 2004 that closing is delayed based on the 90-day London Interbank Offered Rate ("LIBOR") determined two days before the closing. The closing may be delayed beyond November 30, 2004 only upon mutual agreement, including agreement on a new purchase price. The funds to be used to purchase the Facility would come from Portland General's internally generated cash.

There are no fees, commissions or other remuneration to be paid by Portland General to the Owner Trustee, the Owner Participant or any other party in connection with the purchase of the Facility. The Owner Participant is responsible for all of its costs and expenses related to the purchase of the Facility and the termination of the Financing Transaction. Portland General would pay the usual and customary costs and expenses of the Owner Trustee, the indenture trustee and the loan participant, the other parties to the Financing Transaction, incurred by them in connection with termination of the Financing Transaction.<sup>2</sup>

Following the Purchase, Portland General would continue to operate and maintain the Facility for the benefit of the Boardman Plant Co-Owners, and the Boardman Plant Co-Owners would continue to pay their *pro-rata* share of current rate (2004 calendar year) lease rental.<sup>3</sup>

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. E4-2598 Filed 10-13-04; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>1</sup> Under a separate agreement between PGE and the Boardman Plant Co-Owners, the Boardman Plant Co-Owners pay PGE their *pro-rata* share of the lease rent paid by PGE to the Trust, and PGE operates and maintains the Facility for its own benefit as well as the benefit of the Boardman Plant Co-Owners.

<sup>2</sup> Portland General expects that the fees and expenses it would incur in connection with the Purchase would be less than \$20,000.

<sup>3</sup> See above, at n.1.

## DEPARTMENT OF STATE

[Public Notice 4860]

### Culturally Significant Objects Imported for Exhibition Determinations: "Mauritshuis Project: An Introduction to Dutch 17th Century Painting"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Mauritshuis Project: An Introduction to Dutch 17th Century Painting," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Portland Art Museum, Portland, OR, from on or about October 23, 2004, to on or about January 29, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6529). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: October 7, 2004.

**C. Miller Crouch,**  
Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04-23045 Filed 10-13-04; 8:45 am]

**BILLING CODE 4710-08-P**

## DEPARTMENT OF STATE

[Public Notice 4820]

### Announcement of meetings of the International Telecommunication Advisory Committee

**Summary:** The International Telecommunication Advisory Committee (ITAC) will meet on Wednesday, October 27, 2004, 2-4 p.m., at a Washington location to be announced. A detailed agenda and the meeting location will be published on the e-mail reflector [pccii-citel@eblist.state.gov](mailto:pccii-citel@eblist.state.gov) and [pccii-citel@eblist.state.gov](mailto:pccii-citel@eblist.state.gov). The meeting is being held to prepare positions for the upcoming meeting of the Permanent Executive Committee of the Inter-American Telecommunication Commission (November 30-December 3, 2004).

Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Those desiring to attend the meeting who are not on this list may request the information from the Secretariat at [minardje@state.gov](mailto:minardje@state.gov). Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647-2592 or e-mail to [mccorklend@state.gov](mailto:mccorklend@state.gov).

Dated: October 6, 2004.

**Doreen McGirr,**  
Director, ITU Telecommunication Development Affairs, International Communications & Information Policy, Department of State.

[FR Doc. 04-23044 Filed 10-13-04; 8:45 am]

**BILLING CODE 4710-45-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Advisory Circular (AC) 187-1A, Flight Standards Service Schedule of Charges Outside the United States

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of AC 187-1A.

#### SUPPLEMENTARY INFORMATION:

##### Background

AC 187-1A transmits an updated schedule of charges for services of FAA Flight Standards aviation safety inspectors outside the United States. The AC has been updated in accordance with the procedures listed in 14 CFR Part 187, Appendix A.

**FOR FURTHER INFORMATION CONTACT:**

Emily A. White, Federal Aviation Administration, Flight Standards Service, AFS-50, 800 Independence Avenue, SW., Washington, DC 20591, by e-mail at [emily.white@faa.gov](mailto:emily.white@faa.gov), or telephone at (202) 385-8073. Printed copies can be obtained from U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785. The AC will also be available on the FAA's Regulatory and Guidance Library Web site at <http://www.airweb.faa.gov/rgl>.

Issued in Washington, DC, on October 4, 2004.

**John M. Allen,**

*Deputy Director, Flight Standards Services.*

[FR Doc. 04-23076 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Advisory Circular (AC) 23.629-1B, Means of Compliance With Title 14 CFR, Part 23, § 23.629, Flutter**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 23.629-1B. This advisory circular presents information and guidance to provide one means, but not the only means of complying with § 23.629, Flutter (including divergence, and control reversal) of part 23 of the Federal Aviation Regulations. Accordingly, this material is neither mandatory nor regulatory in nature.

The complexity of flutter analysis has historically prompted endeavors to find simplified methods of flutter substantiation. The advent of electronic computers has de-emphasized the need to make drastic assumptions previously necessary to enable mathematical treatment of the flutter phenomenon. However, there remains a need to simplify flutter solution as much as possible consistent with safety in order to minimize the cost and effort required to show freedom from flutter. Past experiences gained by the necessity to judiciously choose degrees of freedom, and by the need to make essential parametric studies has resulted in a generally recognized set of good practices. These good practices form the basis for this advisory circular.

The draft advisory circular was issued for Public Comment on February 25,

2004 (69 FR 8728). When possible, comments received were used to modify the draft advisory circular.

We received some comments regarding the general layout of the advisory circular. We will consider reorganizing the content for the next revision. Any suggestions for the reorganization will be considered. For more information, or to make recommendations for the improvement of this advisory circular, contact Mark James, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329-4137, fax (816) 329-4090, [mark.james@faa.gov](mailto:mark.james@faa.gov).

**DATES:** Advisory Circular (AC) 23-629-1B was issued by the Manager, Small Airplane Directorate on September 28, 2004.

**How to Obtain Copies:** A paper copy of AC 23.629-1B may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC-121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301-322-5377, or by faxing your request to the warehouse at 301-386-5394. The policy will also be available on the Internet at <http://www.airweb.faa.gov/AC>.

Issued in Kansas City, Missouri, on September 28, 2004.

**Dorenda D. Baker,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-23068 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Advisory Circular 33.19-1, Guidance Material for 14 CFR § 33.19, Durability, for Reciprocating Engine Redesigned Parts**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This advisory circular (AC) provides guidance and acceptable methods, but not the only methods, that may be used to demonstrate that redesigned parts for reciprocating engines comply with the requirements of § 33.19 of Title 14 of the Code of Federal Regulations (14 CFR). This AC addresses major type design changes, parts manufacturing approvals (PMA), and supplemental type certificates (STC) for drive system or structural parts in reciprocating engines.

**DATES:** The Engine and Propeller Directorate, Aircraft Certification Service, issued Advisory Circular 33.19-1 on September 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** The Federal Aviation Administration, Attn: Mark Rumizen, Engine and Propeller Standards Staff, ANE-110, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (781) 238-7113; fax: (781) 238-7199; e-mail: [Mark.Rumizen@faa.gov](mailto:Mark.Rumizen@faa.gov).

We have filed in the docket all substantive comments received, and a report summarizing them. If you wish to review the docket in person, you may go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above individual directly, you can use the above telephone number or e-mail address provided.

**How To Obtain Copies:** A paper copy of AC 33.19-1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC-121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301-322-5377, or by faxing your request to the warehouse at 301-386-5394. The AC will also be available on the Internet at "<http://www.faa.gov/>", select "Regulations and Policies" and the link titled "Advisory Circulars".

(Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44704.)

Issued in Burlington, Massachusetts, on September 27, 2004.

**Francis A. Favara,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 04-23073 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Advisory Circular 33.27-1, Turbine Rotor Strength Requirements of 14 CFR 33.27**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 33.27-1, Turbine Rotor Strength Requirements of 14 CFR 33.27. This AC sets forth acceptable methods of compliance with the provisions of the rotor strength (overspeed) requirements of 14 CFR 33.27.

**DATES:** Advisory Circular 33.27-1 was issued by the Engine and Propeller Directorate, ANE-110, on September 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** The Federal Aviation Administration, Attn: Timoleon Mouzakis, Engine and Propeller Standards Staff, ANE-110, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (781) 238-7114; fax: (781) 238-7199; e-mail: [Timoleon.Mouzakis@faa.gov](mailto:Timoleon.Mouzakis@faa.gov).

We have filed in the docket all substantive comments received, and a report summarizing them. If you wish to review the docket in person, you may go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above individual directly, you can use the above telephone number or e-mail address provided.

**How To Obtain Copies:** A paper copy of AC 33.27-1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC-121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301-322-5377, or by faxing your request to the warehouse at 301-386-5394. The AC will also be available on the Internet at "<http://www.faa.gov/>", select "Regulations and Policies" and the link titled "Advisory Circulars".

(Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44704.)

Issued in Burlington, Massachusetts on September 27, 2004.

**Francis A. Favara,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 04-23072 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Opportunity for Public Comment on Surplus Property Release at Manteo Airport, Manteo, North Carolina

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of Title 49, U.S.C. section 47153(d), notice is being given that the FAA is considering a request from the Dare County Airport Authority to waive the requirement that a 1.123 acre parcel of surplus property, located at the Manteo Airport, be used for aeronautical purposes.

**DATES:** Comments must be received on or before November 15, 2004.

**ADDRESSES:** Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave., Campus Building, Suite 2-260, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Norma Mills, Dare County Attorney, at the following address: County of Dare, P.O. Box 1000, Manteo, NC 27954.

**FOR FURTHER INFORMATION CONTACT:** Rusty Nealis, Program Manager, Atlanta Airports District Office, 1701 Columbus Ave., Campus Bldg., Suite 2-260, College Park, GA 30337, (404) 305-7142. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA is reviewing a request by Dare County Airport Authority to release 1.123 acres of surplus property at the Manteo Airport. The property will be exchanged for private property which is needed for the expansion of the Manteo Elementary School. The Dare County Board of Commissioners will provide funds equivalent to the fair market value of the land to the Dare County Airport Authority. These funds will be used for airport purposes only. The property fronts Driftwood Drive and is adjacent to existing Dare County facilities.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Dare County Attorney's Office.

Issued in Atlanta, Georgia on October 5, 2004.

**Scott L. Seritt,**

*Manager, Atlanta Airports District Office, Southern Region.*

[FR Doc. 04-23071 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Availability of a Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for Installation of Category II/III Approaches at O'Hare International Airport at Chicago, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Availability of a Final Environmental Assessment (EA) for Installation of Category II/III

Approaches at O'Hare International Airport at Chicago, Illinois.

**SUMMARY:** The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA has prepared, and approved on October 1, 2004, a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) based on the Final Environmental Assessment (Final EA) for Installation of Category II/III Approaches at O'Hare International Airport at Chicago, IL. The Federal Aviation Administration (FAA) prepared the Final EA in accordance with the National Environmental Policy Act and the Federal Aviation Administration's regulations and guidelines for environmental documents. The Final EA was reviewed and evaluated by FAA, and was accepted on October 1, 2004 as a Federal document by the FAA's Responsible Federal Official.

**FOR FURTHER INFORMATION CONTACT:** Ms. Virginia Marcks, Environmental Engineer, ANI-430, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: (847) 294-7494.

**SUPPLEMENTARY INFORMATION:** The proposed action includes: The upgrade of Runways 27L and 27R from a category I approach to a Category II/III approach, the installation of an Approach Lighting System with Sequenced Flashing Lights (ALSF-2) system to Runways 27L and 27R, the construction of localizer buildings and associated equipment including removal of the existing buildings, installation of 1,000-gallon underground storage tanks at the localizer buildings, the replacement and re-cabling of threshold light fixtures on Runway 27L and 27R, the replacement or potential relocation of the localizer antennae on Runway 27R, the installation of an Inner Marker and Far Field Monitor on Runways 27L and 27R, the removal of existing Medium Intensity Approach Lighting System with Runway Alignment Indicator Lights (MALSR) systems from Runway 27L and 27R, the removal of the Runways 27L and 27R Middle Marker, shelter, and antenna, the removal of the Outer Marker, shelter and antenna from Runway 27R, the replacement of the glide slope antenna and equipment for Runway 27R, the installation of taxiway centerline lights in the apron north of Gates B-17 through B-22, the installation of Runway Guard Lights (RGLs) at connecting taxiways to Runways 27L and 27R, the expansion of lease areas, by the FAA, from the City of Chicago on airport property, the development of

Category II/III instrument approach procedures for Runways 27L and 27R, and the insurance of the National Airspace System (NAS) Change Proposal (NCP) waivers associated with design and installation of the preceding.

The Final EA has been prepared in accordance with the National "Environmental Policy Act (NEPA) of 1969, as amended, FAA Order 1050.IE, Environmental Impacts: Policies and Procedures," and FAA Order 5050.4A, Airport Environmental Handbook." The proposed development action is consistent with the National Airspace System Plan prepared by the U.S. Department of Transportation, Federal Aviation Administration (FAA).

A Final Environmental Assessment and the finding of No Significant Impact Record of Decision (FONSI/ROD) is available for public viewing during normal business hours at the following locations:

Arlington Heights Memorial Library,  
500 N. Dunton Avenue, Arlington Heights, IL 60004.  
Bensenville Public Library, 200 S. Church Road, Bensenville, IL 60106.  
Chicago Department of Aviation Office, Terminal 2 E/F Concourse, Mezzanine Level, Chicago O'Hare International Airport 60016 (by appointment for security, (773) 686-8060).  
Des Plaines Public Library, 1501 Ellinwood Street, Des Plaines, IL 60016.  
Eisenhower Public Library, 4652 N. Olcott Avenue, Harwood Heights, IL 60706.  
Elk Grove Village Public Library, 1001 Wellington Avenue, Elk Grove Village, IL 60007.  
Elmhurst Public Library, 211 Prospect Avenue, Elmhurst, IL 60126.  
Franklin Park Public Library, 10311 Grand Avenue, Franklin Park, IL 60131.  
Harold Washington Library, 400 South State Street, 5th Floor, Chicago, IL 60605.  
Mount Prospect Public Library, 10 South Emerson Street, Mount Prospect, IL 60056.  
Norridge Village Hall, Office of the Village Clerk, 4000 N. Olcott Avenue, Norridge, IL 60706.  
Northlake Public Library, 231 N. Wolf Road, Northlake, IL 60164.  
Oakton Community College Library, Des Plaines, IL 60016.  
Park Ridge Public Library, 20 S. Prospect Avenue, Park Ridge, IL 60068.  
Rosemont Village Hall, Office of the Village Clerk, 9501 Devon Avenue, Rosemont, IL 60018.  
Schiller Park Public Library, 4200 Old River Road, Schiller Park, IL 60176.

Wood Dale Public Library, 520 N. Wood Dale Road, Wood Dale, IL 60191.  
Northeast Illinois Planning Commission (NIPC), 222 South Riverside Plaza, Suite 1800, Chicago, IL 60606.  
Federal Aviation Administration, Great Lakes Region, ANI-430, 2300 East Devon Avenue, Des Plaines, IL 60018 (by appointment for security, (847) 294-7494).

The Final EA and FONSI/ROD will be available through November 16, 2004.

Issued in Des Plaines, Illinois, on October 7, 2004.

**Vincent Bridgeforth,**

*Manager, Chicago NAS Implementation Center, ANI-400, Great Lakes Region.*

[FR Doc. 04-23075 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Aging Transport Systems Rulemaking Advisory Committee Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

**DATES:** The ATSRAC will meet October 21, 2004, from 6 a.m. to 4 p.m. PDT.

**ADDRESSES:** The FAA will conduct the meeting by teleconference and by Webex. The instructions for both are indicated below under the heading "Meeting Instructions."

**FOR FURTHER INFORMATION CONTACT:** Shirley Stroman, Office of Rulemaking, ARM-208, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7470; fax (202) 267-5075; or e-mail [shirley.stroman@faa.gov](mailto:shirley.stroman@faa.gov).

**SUPPLEMENTARY INFORMATION:** This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee. The meeting topics are listed under the "Meeting Agenda" heading of this notice. The meeting is open to the public; however, participation will be limited to the number of persons the meeting arrangements can accommodate.

The public may present written statements to the Committee by providing 20 copies to the Committee's Executive Director. Public statements at the meeting will be considered if time allows. You may contact the individual under the **FURTHER INFORMATION CONTACT** heading of this notice for additional

instructions if you want to file a written statement.

### Meeting Agenda

The agenda topics will include—

- Review and approval of the July 7–8, 2004 ATSRAC meeting minutes.
- Discussion of ATSRAC members' comments to Harmonization Working Group-11's interim report.

### Meeting Instructions

**Teleconference:** You may call either 425.717.7000 or 206.544.4444 to join the meeting. Follow the instructions at the prompts. The passcode to connect to the teleconference is 23611#. If you are prompted to contact the operator for assistance, enter confirmation number I 93303. If you call from outside the calling area, you will be responsible for paying long distance charges.

**Webex:** You must have access to the Internet to use Webex. It is important for you to set-up your Webex access at least one hour before the meeting start to avoid delays. To join the meeting using Webex, sign onto the Internet and enter the Web address given below. You will need to enter meeting number 821085521 and password boeingrocks. <https://boeing.webex.com/boeing/site/advancedframe.php?Rnd6253=7212807624418305>

If you have questions about the meeting instructions, you may contact the individual listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

**Tony Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 04-23058 Filed 10-8-04; 1:42 pm]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application 04-03-U-00-BFD To Use the Revenue From a Passenger Facility Charge (PFC) at Bradford Regional Airport, Lewis Run, PA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Bradford Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law

101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before November 15, 2004.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebom, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Thomas C. Frungillo, Airport Manager of the Bradford Regional Airport Authority at the following address: Bradford Regional Airport, 212 Airport Road, Suite E, Lewis Run, Pennsylvania 16738

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Bradford Regional Airport Authority under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lori Ledebom, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Dr. Suite 508, Camp Hill, Pennsylvania 17011, (717) 730–2835. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Bradford Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 9, 2004, the FAA determined that the application to use the revenue from a PFC submitted by Bradford Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 7, 2004.

The following is a brief overview of the application.

*PFC Application No.:* 04–03–U–00–AVP.

*Level of the proposed PFC:* \$4.50.

*Proposed charge effective date:* May 1, 2003.

*Proposed charge expiration date:* December 1, 2009.

*Total estimated PFC revenue:* \$7,996.

*Brief description of proposed project(s):* Deicing Equipment.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air Taxi/ Commercial Operations filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bradford Regional Airport.

Issued in Camp Hill, PA, on September 10, 2004.

**Lori Ledebom,**

*PFC Contact, Harrisburg Airports District Office, Eastern Region.*

[FR Doc. 04–23074 Filed 10–13–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Policy Statement No. ANM112–05–001]

#### Process for Developing Instructions for Maintenance and Inspection of Fuel Tank Systems Required by SFAR 88

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of final policy.

**SUMMARY:** The Federal Aviation Administration (FAA) announces the availability of final policy on the process used by design approval holders to develop instructions for maintenance and inspection of the fuel tank systems of certain transport category airplanes, as required by Special Federal Aviation Regulation Number 88 (SFAR 88).

**DATES:** This final policy was issued by the Transport Airplane Directorate on October 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Michael Collins, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Safety Management Branch, ANM–112, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2689; fax (425) 227–1149; e-mail: [michael.collins@faa.gov](mailto:michael.collins@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Disposition of Comments

A notice of proposed policy was published in the **Federal Register** on May 28, 2004 as Policy Statement No. PS–AMN100–04–10029. Seven commenters responded to the request for comments.

##### Background

This policy provides guidance for complying with the requirements in

Special Federal Aviation Regulation Number 88 (SFAR 88) for the preparation of instructions for maintenance and inspection of fuel tank systems in certain transport category airplanes. Paragraph 2(a) of SFAR 88 requires certain holders of Type Certificates (TCs) and Supplemental Type Certificates (STCs) of large transport airplanes to conduct a safety review of the fuel tank systems. The purpose of the safety review is to identify design features which may provide ignition sources in the fuel tank systems. Corrective actions, such as design changes, operational procedures, or maintenance may be necessary to eliminate those ignition sources.

The policy relates to Paragraphs 2(b) and 2(c)(2) of SFAR 88 which require that, based upon the safety review, the TC and STC holders develop instructions for maintenance and inspection of the fuel tank systems in order to maintain design features which preclude the existence or the development of an ignition source. The FAA intends that operators use those instructions to propose changes in their maintenance programs in order to maintain those design features for the operational life of the airplane.

The final policy is available on the Internet at the following address: <http://www.airweb.faa.gov/rgl>. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Renton, Washington, on October 6, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–23069 Filed 10–13–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected

burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 19, 2004. No comments were received.

**DATES:** Comments must be submitted on or before November 15, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Michael Ferris, Maritime Administration, 400 7th Street SW., Washington, DC 20590. Telephone: 202-366-2324; FAX: 202-366-9580; or e-mail: [michael.ferris@marad.dot.gov](mailto:michael.ferris@marad.dot.gov). Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* Subsidy Voucher—Operating Differential Subsidy (Bulk and Line Cargo Vessels).

*OMB Control Number:* 2133-0024.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Operators of bulk and liner vessels.

*Forms:* MA-790 and supporting schedules.

*Abstract:* The Merchant Marine Act 1936, authorizes the Secretary of Transportation to provide financial aid in the operation of contract vessels for bulk or liner cargo carrying services that help promote, develop, expand and maintain the foreign commerce of the United States. Vessel owners must submit documentation requesting the financial assistance to the Maritime Administration (MARAD).

*Annual Estimated Burden Hours:* Two hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Authority:** 49 CFR 1.66.

Issued in Washington, DC on October 8, 2004.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04-23043 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-2004-18765]

**Frontal New Car Assessment Program (NCAP)**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).  
**ACTION:** Notice, request for comments.

**SUMMARY:** The primary purpose of the New Car Assessment Program (NCAP) is to provide consumers with a measure of the relative safety of vehicles to aid them in their purchasing decisions. Since 1978, the testing procedures used for the frontal program have remained relatively unchanged. The frontal NCAP test procedure has been almost identical to the frontal barrier test procedure used in Federal Motor Vehicle Safety Standard (FMVSS) No. 208, except vehicles in frontal NCAP tests are tested at a speed 5 mph (8 km/h) faster than the belted test speed in FMVSS No. 208. The higher test speed allows us to observe differences in frontal crashworthiness performance more readily. However, recent amendments to FMVSS No. 208 will require vehicles manufactured after September 1, 2007, to meet the injury criteria of that standard at an increased test speed of 35 mph (56 km/h) for the belted 50th percentile male dummy, the same test speed as the current frontal NCAP test. Because the NCAP test would no longer be a higher test speed than the FMVSS test, the agency has been considering possible changes to NCAP. This document introduces and requests comments on some alternatives to the future of the frontal NCAP.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than December 13, 2004.

**ADDRESSES:** Comments should refer to the docket number and be submitted by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Web Site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site. Please note, if you are submitting

petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all petitions received into any of our dockets by the name of the individual submitting the petition (or signing the petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For technical issues surrounding the information in this document, please contact Mr. Nathaniel Beuse at (202) 366-1740. For legal issues surrounding this document, please contact Mr. Stephen Wood at (202) 366-4992. Both of these individuals may be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

I. Background

A. History of the Frontal New Car Assessment Program

B. Motivation To Revisit the Frontal NCAP

II. Worldwide Frontal New Car Assessment Program Test Procedures

A. European New Car Assessment Program

B. Japanese New Car Assessment Program

C. Australian New Car Assessment Program

D. Korean New Car Assessment Program

E. Insurance Institute for Highway Safety

III. Discussion of Options

A. Maintain Current Program

B. Changes to the Test Procedure

1. Increase Test Speed

2. Testing With a Variety of Dummies
3. Offset Frontal Test
- C. Changes to Rating System
  1. Change Star Rating Limits
  2. Add New Injury Metrics to Star Rating
- IV. Public Comment
- Appendix A: NCAP Frontal Rating System

## I. Background

### A. History of the Frontal New Car Assessment Program

In 1978, the National Highway Traffic Safety Administration (NHTSA) began the New Car Assessment Program (NCAP) to provide consumers with comparative crashworthiness information on new vehicles. Years of developmental work led to the creation of a frontal crash test procedure designed to do this. The agency published the first set of NCAP results based on this test for 1979 model year (MY) vehicles.

Since the beginning of the program, the frontal NCAP test procedure has been almost identical to NHTSA's Compliance program, which follows the Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant crash protection. Like the FMVSS No. 208 test, vehicles subjected to an NCAP test are towed head-on into a fixed, rigid barrier. However, for frontal NCAP, the vehicles are tested at a speed of 35 mph (56 km/h). This is 5 mph (8 km/h) greater than the speed for the belted test under the FMVSS No. 208 standard.<sup>1</sup> The NCAP crash test is conducted at 35 mph (56 km/h) rather than the 30 mph (48 km/h) specified in FMVSS No. 208 to allow differences in frontal crashworthiness performance to be more readily observed.

In a frontal NCAP test, the vehicle carries two instrumented Hybrid III test dummies that represent 50th percentile adult males. The dummies are located in the driver and front passenger seats and are restrained by the vehicle's seat belts and air bags (if available in earlier years). During the crash, forces and accelerations are recorded and then used to indicate the likelihood of serious injury and, in turn, the relative

crashworthiness of the vehicle in a severe frontal impact. Originally, this frontal NCAP data was presented to the public in the form of numerical scores for Head Injury Criterion (HIC), chest acceleration (measured in Gs), and femur forces.

Beginning with the 1994 model year (MY), NHTSA adopted a simplified nonnumeric format, the "star rating", for presenting the test results. The star rating is based on the combined effect of injury to the head and chest. Injury risk curves were developed that related HIC and chest accelerations to injury probability (P). The combined probability of serious injury is then calculated from the equation:

$$P_{\text{combined}} = P_{\text{head}} + P_{\text{chest}} - P_{\text{head}} * P_{\text{chest}}$$

A star rating from one to five (five being the highest) is then awarded based on this combined probability of serious injury:

- ★ = 5 stars = 10% or less chance of serious injury to the head or chest
- ★ = 4 stars = 11 to 20% chance of serious injury to the head or chest
- ★ = 3 stars = 21 to 35% chance of serious injury to the head or chest
- ★ = 2 stars = 36 to 45% chance of serious injury to the head or chest
- ★ = 1 star = 46% or greater chance of serious injury to the head or chest

A graphical representation of this system may be found in Appendix A. Even though they are currently not included in the calculations of the star rating, readings from the neck, femur, lower legs, and pelvis are also measured. In addition, anomalous test occurrences have been noted for the past several years, and beginning with MY 2001, NHTSA has provided further explanation on safety concerns not reflected in the star rating.<sup>2</sup>

Each model year, the agency is able to provide safety information in frontal crashes on approximately 80–85% of new model entries to the vehicle fleet. The agency widely distributes the results of its crash tests through media events, brochure circulation, and promotion of its Web site. Consumer interest in this type of information can be measured in a number of ways. The number of visitors to the NCAP section of NHTSA's Web site has grown from an average of 3,000 weekly in 1997 to an average of more than 43,000 weekly in 2004. The results of a 1997 Customer Satisfaction Survey conducted by NHTSA suggest that safety does sell. In fact, 74% of the survey respondents considered safety a "very important"

factor in their purchase decision. Another 21% deemed safety as being "somewhat important." Given this level of consumer interest in vehicle safety, it is no surprise that ads touting star ratings from NCAP's crash tests are used to market today's vehicles.

Not only is the program popular with consumers, it has also resulted in measurable improvements in the passenger vehicle fleet. Manufacturers use NCAP results to evaluate and improve their vehicles. For example, in the 1979 MY, only one of the vehicles tested had a 5-star rating for the driver (assuming the results had been presented in that way). In the 2003 MY, 65 of the vehicles tested received a 5-star rating for the driver. A similar trend has been seen for the right front seat passenger. The rise in NCAP ratings has been accompanied by a corresponding decrease in the fatality rate in motor vehicle crashes.<sup>3</sup> While NCAP is not the sole stimulus for this improvement in safety, a 1995 General Accounting Office (GAO) study said " \* \* \* it seems reasonable to conclude that manufacturers' successful efforts to improve their products' performance in NHTSA crash tests, particularly NCAP, have contributed to improved occupant protection in real-world crashes."<sup>4</sup>

Real world data shows that frontal crashes still account for the largest portion of crash fatalities for belted occupants in the United States. A recent analysis of 2002 FARS data for belted occupant fatalities showed that 40% of fatalities were attributed to frontal impacts, while 33% were a result of side impact, 22% from rollover, and 5% were rear end crashes and unknowns. The same analysis also found that the major areas subject to injury (AIS 3 or greater) in frontal crashes were the head (22%) and chest (26%). In addition, the next largest percentage of injury (24%) was attributed to the victims' lower limbs and pelvis. This real world data suggests that there continues to be merit in providing consumer information about the relative frontal impact occupant protection provided by various vehicles.

### B. Motivation To Revisit the Frontal NCAP

As previously mentioned, the frontal NCAP test procedure is largely based on the FMVSS No. 208 crash test. However in 2000, FMVSS No. 208 was upgraded

<sup>1</sup> In accordance with a 1984 final rule that required automatic crash protection, the agency's compliance office has conducted 30 mph crash tests according to FMVSS No. 208 on passenger cars beginning in MY 1987 and in 1992 on light trucks. Vehicles were required to comply with FMVSS No. 208 requirements with and without manual seat belts on the dummies. The vast majority of 30 mph crash tested conducted by the agency through the compliance office through MY 2003 were unbelted. Beginning in mid-MY 1997, manufacturers could elect to utilize an optional sled test to comply with the unbelted test requirements, but vehicles still needed to comply when tested in a 30 mph crash test with dummies belted. Other options were specified in the May 2000 final rule for advanced airbags.

<sup>2</sup> For the frontal test, NHTSA indicates on the Web site and in the Buying A Safer Car brochure anomalies such as femur loads in excess of FMVSS No. 208 requirements.

<sup>3</sup> Hackney, James R. "The Effects of FMVSS No. 208 and NCAP as Determined From Crash Test Results." Proceedings of the 13th International Conference on Experimental Safety Vehicles. Paris, France. November 1991.

<sup>4</sup> GAO. "Highway Safety: Reliability and Validity of DOT Crash Tests." GAO/PEMD-95-5. May 1995.

to include multiple sized dummies and replace the current fixed barrier belted test with a higher speed version (65 FR 30679, May 12, 2000).

Beginning with vehicles manufactured on September 1, 2003, additional testing using the 5th percentile female dummy was introduced to the FMVSS No. 208 requirements. Also, beginning with vehicles manufactured on September 1, 2007, vehicles must meet the FMVSS No. 208 requirements when tested with a belted 50th percentile male dummy at 35 mph (56 km/h), (*i.e.* the same speed as the current NCAP test.)<sup>5</sup> Each of these changes to FMVSS No. 208 will affect the utility of NCAP. Currently, the frontal NCAP test does not use any dummy other than the 50th percentile male. In addition, since all vehicles will have to comply at this higher speed, differences between vehicles will likely be less apparent. These changes to FMVSS No. 208 have led the agency to consider revising the test procedures and/or the calculation of the star rating used in frontal NCAP.

## II. Worldwide Frontal New Car Assessment Program Test Procedures

### A. European New Car Assessment Program

The European New Car Assessment Program (EuroNCAP) was established and began rating vehicles in 1997. Five European governments, the European Commission, and various motoring and consumer organizations throughout Europe currently back and provide funding for EuroNCAP.

The frontal test performed by Euro NCAP uses a speed of 40 mph (64 km/h), wherein a vehicle collides head-on with a fixed aluminum honeycomb barrier at a 40% overlap on the driver's side.<sup>6</sup> A pair of instrumented 50th percentile Hybrid III dummies is used to collect data in the driver and front passenger seats.<sup>7</sup>

<sup>5</sup> This new requirement is phased-in over a number of years. The phase-in begins September 1, 2007 (2008 model year). All vehicles will be required to meet this requirement by the 2011 model year. In addition to this, NHTSA has proposed to require vehicles to meet the FMVSS No. 208 requirements using the 5th percentile dummy at 35 mph (56 km/h) (68 FR 46539; August 6, 2003).

<sup>6</sup> *Frontal Impact Testing Protocol*. Version 4.0. January 2003. European New Car Assessment Program. Accessed May 26, 2004. <[http://www.euroncap.com/content/test\\_procedures/downloads.php?area\\_ID=3](http://www.euroncap.com/content/test_procedures/downloads.php?area_ID=3)>.

<sup>7</sup> Although not part of the frontal crashworthiness ratings, two child dummies, a TNO/Ogle P<sup>1</sup>/<sub>2</sub> infant (18-month-old) and a TNO P3 toddler (3-year-old), are placed in the rear seat in appropriate child restraints, to assign the vehicle a separate child protection star rating.

Once a vehicle is crashed, occupant response data is linked with a sliding scale to assign points to different body regions.<sup>8</sup> The regions rated for the driver include the head, neck, chest, knee/femur/pelvis, lower leg, and foot/ankle. The same regions are also rated for the passenger, with the exception of the foot/ankle. Additionally, each adult body region is also rated based on a combination of visual assessment and measurement techniques to determine if the final body region ratings should be adjusted. Once the final point values are assigned, each body region is given one of five corresponding degrees of protection: Good, Adequate, Marginal, Weak, and Poor.

The results of the driver and passenger body regions are later combined with the side impact evaluation to give a final crashworthiness star rating for the vehicle. No star rating for the frontal crash is given. Additional safety features can also add points, called "modifiers," to a vehicle's score used to establish the final star rating. A struck star (a star with a line through it) is used to indicate when a serious safety concern exists for a vehicle, which EuroNCAP considers to be cases when the head, chest, abdomen, or pelvis of an occupant's body receives a score of zero. Currently, Euro NCAP does not note other safety concerns such as fuel leakages and door openings.

### B. Japanese New Car Assessment Program

The Japanese New Car Assessment Program (Japan NCAP) testing is conducted by the National Agency for Automotive Safety and Victim's Aid (NASVA) in conjunction with the Ministry of Land, Infrastructure, and Transport.<sup>9</sup> Japan NCAP began testing and rating vehicles using a full-frontal test in 1995, and added an offset frontal test in 2001.

The full-frontal and offset frontal tests are used, along with a side impact test, to establish an overall rating.<sup>10</sup> In the full-frontal test, a vehicle moving at a speed of 34 mph (55 km/h) collides head-on into a rigid barrier. Hybrid III 50th percentile dummies occupy the

driver and passenger front seats. Identically to EuroNCAP, the Japanese offset frontal test forces the vehicle to collide head-on with a fixed aluminum honeycomb barrier at a 40% overlap, striking the driver's side at 40 mph (64 km/h). Again, two Hybrid III 50th percentile dummies are placed in the driver and front passenger seats.

In the frontal collision tests, Japan NCAP assigns points to injury readings recorded from each dummy's head, neck, chest, and legs. The vehicle is checked for certain types of damage and deformation that may detract from the frontal scores received. After the final number of points is assigned, the scores from each region are weighted and tallied to arrive at the total score for each vehicle occupant. Each vehicle is assigned a "level" from one to five (five being the highest) for the occupant in each configuration.

For the driver, the scores from both frontal tests are combined with the scores from the side collision test to obtain an overall score. For the front passenger, only the scores from the full-frontal test are used. The passenger results are combined with the driver's side impact score to determine an overall score for the passenger. Based on these overall scores, a sliding point scale is used to rate each occupant of the vehicle from one to six stars. Safety concerns such as doors opening and fuel leaks are also noted.

### C. Australian New Car Assessment Program

The Australian New Car Assessment Program (ANCAP) is a program supported by the New Zealand and Australian governments as well as a host of automobile clubs and traffic authorities in both of those countries.<sup>11</sup> In 1999, the program adopted the test procedures and rating system of EuroNCAP, making the two programs nearly identical.

One major aspect of ANCAP that differs from the EuroNCAP program is the way that safety concerns are reported. Instead of a struck star, ANCAP adds a warning note to the overall score indicating if a score of zero was recorded for the head, chest, abdomen, or pelvis. Another difference is that ANCAP does not rate vehicles for child protection.

### D. Korean New Car Assessment Program

In 1999, the Korean Automotive Testing and Research Institute (KATRI) initiated crash testing as part of the

<sup>8</sup> *Assessment Protocol and Biomechanical Limits*. Version 4.0. January 2003. European New Car Assessment Program. Accessed May 26, 2004. <[http://www.euroncap.com/content/test\\_procedures/downloads.php?area\\_ID=3](http://www.euroncap.com/content/test_procedures/downloads.php?area_ID=3)>.

<sup>9</sup> "New Car Assessment Japan." National Agency for Automotive Safety and Victims' Aid. Accessed May 26, 2004. <<http://www.nasva.go.jp/assess/html2004e/as101.html>>.

<sup>10</sup> "Testing Methods." National Agency for Automotive Safety and Victims' Aid. Accessed May 26, 2004. <<http://www.nasva.go.jp/assess/html2003e/as103.html>>.

<sup>11</sup> "How ANCAP Tests are Conducted." Australian Automobile Association. Accessed May 26, 2004. <<http://www.aaa.asn.au/ancap.htm>>.

Korean New Car Assessment Program (Korea NCAP). Korean NCAP only performs a frontal crash rating at this time, and has chosen to adopt the testing procedure, risk curves, and star rating system used by the U.S. NCAP.<sup>12</sup>

#### *E. Insurance Institute for Highway Safety*

The Insurance Institute for Highway Safety (IIHS) is a nonprofit research and communications organization funded by the auto insurance industry in the United States.<sup>13</sup> The IIHS performs a 40 mph (64km/h) overlap frontal test by crashing each subject vehicle into a deformable aluminum honeycomb barrier across 40% of its front end.<sup>14</sup> A Hybrid III 50th percentile male dummy is placed in the driver's seat.

The IIHS examines three areas of performance when assigning ratings to a vehicle: structure/safety cage, dummy injury measures, and restraints/dummy kinematics.<sup>15</sup> The structural performance is evaluated by using a series of pre- and post-crash measurements to quantify the intrusion that has occurred. Dummy injury measures are determined from responses collected from the driver's head, neck, chest, legs, and feet. The evaluation of the restraints and dummy kinematics occurs through an examination of the high-speed film and various measurements. Ratings are assigned to each of these three areas by using a scale of Good, Acceptable, Marginal, or Poor. An overall rating is assigned using the same terms by averaging the ratings from each of these areas, with the restraints/dummy kinematics portion weighted less heavily.

### **III. Discussion of Options**

NHTSA is considering several options regarding possible changes to the NCAP frontal crash test program. While listed individually, NHTSA recognizes that there may be merit in combining one or more of these options in the final form of the frontal program. NHTSA anticipates implementing any changes to the frontal test procedure beginning

with the MY 2008 program in order to coincide with the initial phase-in for the 35 mph (56 km/h) belted requirement of FMVSS No. 208. In considering the options, NHTSA is striving to keep the basic philosophy of NCAP in mind—to provide consumers with meaningful comparative safety information for their purchase decisions and to provide a market incentive for manufacturers to build safer motor vehicles.

For each of the options described herein, a number of the agency's observations surrounding each are also briefly discussed. NHTSA will be evaluating options on their potential to provide continued meaningful information to consumers. In addition, some of the factors the agency will also consider will include maintaining the largest market coverage possible and the potential to distinguish superior occupant protection systems in a frontal crash.

#### *A. Maintain Current Program*

Since MY 1979, the basic test procedure used for frontal NCAP testing has remained unchanged. Furthermore, since 1994, NCAP has used the same star rating scheme to rate vehicles and provide test results to consumers. The agency believes that this constant method of conducting tests and rating vehicles has led to vast improvements in vehicle restraint design. In MY 2003, 88% of tested vehicles received a four- or five-star driver rating compared to only 30% of MY 1979 vehicles that received these ratings.<sup>16</sup>

The real world data indicates that the current frontal test represents around 20% of all fatal frontal crashes and 38% of MAIS 3+ injuries among belted occupants in airbag-equipped vehicles.<sup>17</sup> In addition, NASS data from 1988–1998 suggests frontal crashes account for 42% of non-rollover frontal crashes, assuring that this type of testing continues to be relevant.<sup>18</sup>

With this option, NCAP test results could be used for compliance with FMVSS No. 208 and vice-versa, thereby maintaining or perhaps increasing the amount of consumer information provided by the agency. Compliance test results could be used to assign star ratings to additional vehicles tested by NCAP that the agency could have

otherwise not tested. Also, keeping the program test procedure unchanged would eliminate the transition period to another test, and consequently, the results for newly tested vehicles would remain comparable to previous years. In addition, this test is already demanding on restraint systems, thereby continuing to spur market incentives for their improvement.

However, under this choice, only a portion of three-star ratings and the current four- and five-star ratings would equate to a vehicle compliant with the FMVSS No. 208 requirements beginning in MY 2008. The current limits for HIC and chest acceleration in FMVSS No. 208 are 700 (HIC 15) and 60 (g's), respectively. Although NCAP currently uses HIC 36 as part of the star rating calculation as shown in Appendix A, scaling the risk curve to HIC 15 would produce basically the same result. That is, the compliance limit would still represent the current star band separating the three- and two-star bands.<sup>19</sup> As a result, less discrimination among vehicles would exist and essentially a five-tier rating system would be reduced down to three. Only vehicles that barely passed compliance would receive a three-star rating. In order to continue with a five-tier system, a new rating system would need to be developed.

#### *B. Changes to the Test Procedure*

As mentioned previously, the frontal NCAP test procedure involves towing a vehicle into a fixed rigid barrier at 35 mph (56 km/h). Two belted instrumented Hybrid III dummies are seated in the driver and front passenger seats; forces and accelerations measured during the test are recorded. Changes to the test speed, dummies used, and barrier type/configuration could result in additional information being provided to consumers. In addition, other crash modes and injuries could be addressed.

##### **1. Increase Test Speed**

One option for revising the NCAP frontal test program would be to increase the test speed to 40 mph (64 km/h). This would mean that the frontal NCAP test would again be conducted 5mph (8 km/h) faster than the FMVSS No. 208 test.

This option allows for a simple transition from the current test. No changes to the test procedure would have to be made except for the increase in vehicle speed. In addition, the frontal

<sup>12</sup> "Crash-Test Ratings." Korean Automobile Testing and Research Institute. Accessed May 26, 2004. <[http://www.kotsa.or.kr/english/sub/ncap02\\_1.htm](http://www.kotsa.or.kr/english/sub/ncap02_1.htm)>.

<sup>13</sup> "Vehicle Research Center." Insurance Institute for Highway Safety. Accessed May 26, 2004. <<http://www.highwaysafety.org/about.htm>>.

<sup>14</sup> "What is Frontal Offset Crash Testing?" Insurance Institute for Highway Safety. Accessed May 26, 2004. <[http://www.highwaysafety.org/vehicle\\_ratings/ce/offset.htm](http://www.highwaysafety.org/vehicle_ratings/ce/offset.htm)>.

<sup>15</sup> "How the Institute Evaluates Vehicles in the Frontal Offset Crash Test." Insurance Institute for Highway Safety. Accessed May 26, 2004. <[http://www.highwaysafety.org/vehicle\\_ratings/ce/def.htm](http://www.highwaysafety.org/vehicle_ratings/ce/def.htm)>.

<sup>16</sup> The star rating percentage for 1979 is assigned as if the star rating had been in place at that time.

<sup>17</sup> Stucki, Sheldon L. "Determination of Frontal Offset Test Conditions Based on Crash Data." Paper No. 98-S1-O-02. Enhanced Safety of Vehicles Conference 1998.

<sup>18</sup> Park, Brian T., et al. "Comparison of Vehicle Structural Integrity and Occupant Injury Potential in Full-frontal and Offset-frontal Crash Tests." SAE International Congress, March 2000.

<sup>19</sup> Regardless of what options are adopted for the revisions to the frontal program, the agency expects to update the star rating system to use HIC 15.

NCAP test could serve as an indicative compliance test since the only difference would be test speed. On the other hand, very limited research has been conducted at this test speed. Vehicle designs that result from this speed of testing could have unintended adverse consequences, such as increased stiffness and more aggressive airbags. Additionally, using 1993–2002 NASS data for all front outboard seat occupants (regardless of belt use), change in velocities of 40 mph (64 km/h) or greater accounted for approximately 0.4% of occupants in non-rollover frontal crashes, a smaller number of real world crashes than is represented by the current NCAP speed. Crashes of this severity accounted for 9% of those who were seriously injured (fatalities plus those with MAIS 3–5) and 30% of fatalities.

## 2. Testing With a Variety of Dummies

Instead of using only 50th percentile male dummies in the driver and front passenger seat during each frontal NCAP test, two possible alternatives are being considered. One option would be to have the 5th percentile adult female dummy occupy both front seating positions. NHTSA has recently proposed changes to FMVSS No. 208 to require testing with the 5th percentile female dummy at 35 mph (56 km/h), instead of 30 mph (48 km/h), similar to the requirements for the 50th percentile male dummy. If this provision were not adopted as a final rule in FMVSS No. 208, one alternative would be to change the NCAP procedure to test with the 5th female percentile dummy.

Another option would be to vary the dummy used in the front seating positions as well as placing dummies in the rear seating positions. The 50th percentile male dummy could be placed in the driver seating position and the 5th percentile female dummy could be placed in the passenger seating position or vice-versa. Additionally, rear seat occupants could include the twelve-month-old CRABI or the three-, six-, and ten-year-old Hybrid III child dummies restrained in appropriate child seats. The test would still be a 35 mph (56 km/h) frontal crash, but would instead evaluate how well the vehicle protects a range of occupant sizes. Currently, the agency is evaluating the merits of adding child dummies to the rear seat of frontal NCAP tests as part of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414, 114 Stat. 1800). The agency is considering the option of adding child dummies to the frontal program in response to TREAD, as well as here.

If the two different adult dummies mentioned were used, testing could lead to improved protection for many sizes of occupants; manufacturers would have an incentive to improve safety for a greater range of occupant sizes. If child dummies were used, it could also lead to improved rear seat and child occupant protection. Furthermore, all dummy scores could be combined to develop an overall frontal rating.

## 3. Offset Frontal Test

The offset frontal test is a crashworthiness test conducted by four of the six major consumer information programs around the world. In this test, a vehicle is crashed into a deformable honeycomb barrier across 40% of the vehicle's front end. Testing by other programs has most commonly been conducted at a speed of 40 mph (64 km/h). While the full-frontal test is very demanding on a vehicle's restraint system, the offset frontal test tends to evaluate the structure of the vehicle. On February 3, 2004, the agency published a notice (69 FR 5108) requesting comments on agency test results and the possibility of incorporating high speed offset frontal test requirements into FMVSS No. 208.

Incorporation of an offset test requirement could be done either in conjunction with the FMVSS No. 208 35 mph (56 km/h) requirements, or as a replacement of the full frontal test. The agency is currently evaluating the merits of this high speed test procedure for incorporation into FMVSS No. 208. A new rating system would need to be developed if the offset frontal test is used.

## C. Changes to Rating System

One of the unique features of the frontal NCAP is that vehicles are assigned ratings based on occupant injury risk curves. These risk curves equate readings obtained from a test dummy to injuries a human could experience. In the frontal program, HIC and chest acceleration results are combined to predict a combined probability of serious injury to the head and chest. If no changes are made to the frontal test procedure, changes could be made to the rating system to adjust the probability limits or include additional injury criteria. In effect, a five-star rating could become more difficult to attain. Two alternatives to change the rating system are being considered.

## 1. Change Star Rating Limits

Redefining each of the five star rating probability limits could mean using the same head and chest injury risk curves currently used for the rating, but

adjusting the current five-star rating bands. For example, rather than using a 10% or less chance of serious injury to the head and chest to establish a five star performance, a 5% or less chance of serious injury to the head and chest could be used as a basis for five stars. The result would be that achieving a five-star rating would be more difficult.

For this option, there would be no change to the test procedure. Additionally, occupant injury risk curves that have already been established could be used to calculate ratings from both the frontal NCAP tests and the upgraded frontal compliance tests. A basis for choosing the new probability limits would have to be devised.

## 2. Add New Injury Metrics to Star Rating

Recent changes to FMVSS No. 208 have added injury criteria for neck loading (Nij) and chest deflection. Both of these injury metrics are currently measured in the NCAP test but are not used to compute the star rating. NCAP also records femur and tibia loads, but these readings are not incorporated into the star rating calculation. In biomechanical literature, there are risk curves for each one of the aforementioned injury metrics.<sup>20</sup> These risk curves could be added to the current NCAP head and chest risk curves to develop an occupant rating that is more inclusive than the current frontal NCAP rating. This alternative is feasible in that there would be no change to the frontal NCAP test procedure, and occupant injury risk curves have already been established. However, a few complexities arise with this option. While several authors have developed methodologies to estimate the probability of death from multiple injuries, research would still be needed to update these methodologies, weight the additional injury types differently, or use a methodology similar to other consumer metric programs.

## IV. Public Comment

The primary goal of NCAP is provide consumers with a measure of the relative safety potential of vehicles to aid them in purchasing decisions and provide a market incentive for manufacturers to increase the safety potential of their vehicles. NHTSA asks commenters to keep this goal in mind when responding to this Notice.

Comments are sought on the options discussed herein and the agency's initial

<sup>20</sup> Kuppa, Shashi, et al. "Lower Extremity Injuries and Associated Injury Criteria." 17th International Technical Conference on the enhanced Safety of Vehicles. Amsterdam, The Netherlands. June 2001.

assessments. To facilitate analysis of the comments, it is requested that responses be organized by these options. The options discussed in this document are not intended to be all-inclusive. Suggestions on other alternatives such as advanced dummies, injury criteria, and test procedures are also sought. NHTSA will consider all comments and suggestions in deciding what changes, if any, may be appropriate for the frontal NCAP. Given the timeframe, NHTSA would request that other suggestions include any available data and supporting rationale, and research needed to implement them (if not already in the Code of Federal Regulations) to assist the agency in evaluating their merit for a frontal crashworthiness consumer information program.

In addition to comments on these options, NHTSA requests that commenters address the issue of timing the changes to the frontal NCAP program. Given that many of the updates to FMVSS No. 208 will be phased in over a number of years, NHTSA requests comments on whether frontal NCAP should make changes at the beginning of the FMVSS No. 208 phase-in, the 2008 MY, or wait until the end of the phase-in, which is the 2011 MY. Commenters should keep in mind that most of the options under consideration involve differences in test modes and/or assessment methods that will preclude comparison between vehicles tested under the current frontal NCAP program and vehicles tested under the revised program. Therefore, a phase-in of the new frontal NCAP program is not under current consideration. In particular, commenters should discuss any concerns with testing a vehicle under a revised NCAP program prior to its certification to the new FMVSS No. 208 requirements.

#### *How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must be no longer than 15 pages long (49 CFR 553.21). We establish this limit to encourage the preparation of comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit to the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

#### *How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### *How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. This submission must include the information that you are claiming to be private; that is, confidential business information. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

#### *Will the Agency Consider Late Comments?*

We will consider all comments that are received by Docket Management before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we

will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a proposal concerning these proposed frontal NCAP upgrades, we will consider that comment as an informal suggestion for future action.

#### *How Can I Read Comments Submitted By Other People?*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also review the comments on the Internet. To access the comments on the Internet, take the following steps:

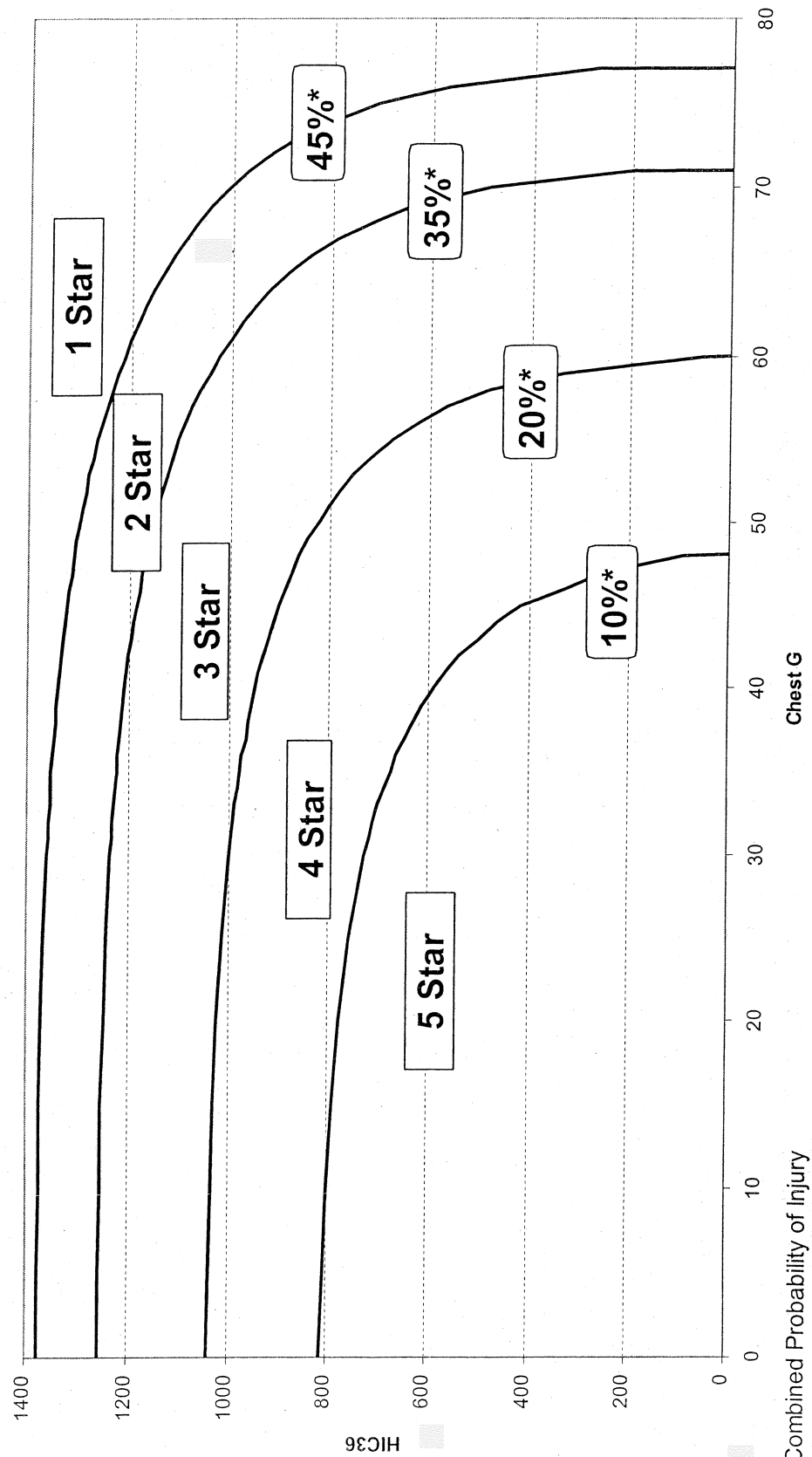
1. Go to the Docket Management System (DMS) web page of the Department of Transportation (<http://dms.dot.gov/>).
2. On that page, click on "Search"
3. On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA-1998-1234," you would type "1234." After typing the docket number, click on "Search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You can download the comments.

Please note that even after the comment closing date we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

**BILLING CODE 4910-59-P**

## Appendix A: NCAP Frontal Rating System

## NCAP Five Star Rating System



\*Combined Probability of Injury

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: October 6, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04-23078 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-59-C**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34543]

#### **Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Fulton County Railway, LLC**

Patrick D. Broe (Mr. Broe) and OmniTRAX, Inc. (OmniTRAX) (collectively, applicants) have filed a verified notice of exemption to continue in control of Fulton County Railway, LLC (FCR), upon FCR's becoming a Class III rail carrier.

The transaction is scheduled to be consummated on or shortly after October 15, 2004.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34542, *Fulton County Railway, LLC—Lease and Operation Exemption—CSX Transportation, Inc.*, wherein FCR<sup>1</sup> seeks to lease from CSX Transportation, Inc. (CSXT), and operate approximately 55 miles of rail lines that extend from: (1) milepost ANO 855.06, V.S. 3+30, at Fulco Junction, westerly to milepost ANO 858.72, V.S. 196+31; (2) milepost ANO 858.72, V.S. 196+31 northeasterly to milepost ANO 860.75, V.S. 304+70, at the northeast end of the line; and (3) V.S. 196+31 = V.S. 0+00 southwesterly to V.S. 208+94, at the southwest end of the line, through the Fulco Industrial Park, including the track in the Fulco Yard, and the appurtenant sidings, and industrial tracks, in Atlanta, GA.

Mr. Broe is a noncarrier individual who directly controls OmniTRAX, a noncarrier company. OmniTRAX currently controls nine Class III rail carriers operating in seven states: Chicago Rail Link, LLC (CRL); Georgia Woodlands Railroad, LLC (GWRC); Great Western Railway of Colorado, LLC (GWR); Great Western Railway of Iowa LLC (CBGR); Manufacturers' Junction Railway, LLC (MJ); Newburgh & South Shore Railroad Limited (NSR); Northern Ohio & Western Railway, LLC (NOW); Panhandle Northern Railroad, LLC

(PNR); and Alliance Terminal Railroad, LLC (ATR).<sup>2</sup>

Applicants state that: (1) The rail lines operated by CRL, GWRC, GWR, CBGR, MJ, NSR, NOW, PNR and ATR do not connect with the rail lines being leased by FCR; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being leased by FCR with any railroad in the OmniTRAX corporate family; and (3) neither FCR nor any of the carriers controlled by OmniTRAX are Class I rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of its rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by the ten railroads.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34543, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: October 7, 2004.

<sup>2</sup> CRL's lines are located in Illinois; GWRC's line is located in Georgia; GWR's lines are located in Colorado; CBGR's lines are located in Iowa; MJ's lines are located in Illinois; NSR's lines are located in Ohio; NOW's line is located in Ohio; PNR's line is located in Texas; and ATR's lines are located in Texas.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04-23049 Filed 10-13-04; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34542]

#### **Fulton County Railway, LLC—Lease and Operation Exemption—CSX Transportation, Inc.**

Fulton County Railway, LLC (FCR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from CSX Transportation, Inc. (CSXT), and operate approximately 55 miles of rail lines located in Atlanta, GA. The rail lines extend from: (1) Milepost ANO 855.06, V.S. 3+30, at Fulco Junction, westerly to milepost ANO 858.72, V.S. 196+31; (2) milepost ANO 858.72, V.S. 196+31 northeasterly to milepost ANO 860.75, V.S. 304+70, at the northeast end of the line; and (3) V.S. 196+31 = V.S. 0+00 southwesterly to V.S. 208+94, at the southwest end of the line, through the Fulco Industrial Park, including the track in the Fulco Yard, and the appurtenant sidings, and industrial tracks.

This transaction is related to STB Finance Docket No. 34543, *Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Fulton County Railway, LLC.*, wherein Patrick D. Broe and OmniTRAX, Inc., have filed a notice of exemption to continue in control of FCR upon its becoming a Class III rail carrier.

FCR certifies that its projected revenues as a result of this transaction will not result in FCR's becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed \$5 million.

The transaction is expected to be consummated on or shortly after October 15, 2004.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34542, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik, LLP, 1455 F

<sup>1</sup> FCR, a Colorado Limited Liability Company, was formed for the purpose of leasing and operating certain rail lines owned by CSXT in Atlanta, GA.

Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: October 7, 2004.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. 04-23048 Filed 10-13-04; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

#### Agency Information Collection; Activity Under OMB Review; Airline Service Quality Performance—Part 234

**AGENCY:** Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104-13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of DOT requiring large certificated air carriers to file "On-Time Flight Performance Reports" and "Mishandled-Baggage Reports" pursuant to 14 CFR 234.4 and 234.6. These reports are used to monitor the quality of air service that major air carriers are providing the flying public.

**DATES:** Written comments should be submitted by December 13, 2004.

**ADDRESSES:** Comments should be directed to: Office of Airline Information, K-14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590-0001, FAX NO. 366-3383 or E-MAIL [bernard.stankus@bts.gov](mailto:bernard.stankus@bts.gov).

**Comments:** Comments should identify the OMB # 2138-0041. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138-0041. The postcard will be date/time stamped and returned.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus Office of Airline Information, K-14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-4387.

#### SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138-0041.

Title: Airline Service Quality Performance—Part 234.

Form No.: BTS Form 234.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers that account for at least 1 percent of the domestic scheduled passenger revenues.

Number of Respondents: 18.

Total Burden Per Response: 20 hours.

Total Annual Burden: 4,380 hours.

Needs and Uses:

#### Consumer Information

Part 234 gives air travelers information concerning their chances of on-time flights and the rate of mishandled baggage by the eleven largest scheduled domestic passenger carriers.

#### Reducing and Identifying Traffic Delays

The Federal Aviation Administration uses Part 234 data to pinpoint and analyze air traffic delays. Wheels-up and wheels-down times are used in conjunction with departure and arrival times to show the extent of ground delays. Actual elapsed flight time, wheels-down minus wheels-up time, is compared to scheduled elapsed flight time to identify airborne delays. The reporting of aircraft tail number allows the FAA to track an aircraft through the air network, which enables the FAA to study the ripple effects of delays at hub airports. The data can be analyzed for airport design changes, new equipment purchases, the planning of new runways or airports based on current and projected airport delays, and traffic levels. The identification of the reason for delays allows the FAA, airport operators, and air carriers to pinpoint delays under their control.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on October 7, 2004.

**Donald W. Bright,**

Assistant Director, Airline Information.

[FR Doc. 04-23080 Filed 10-13-04; 8:45 am]

BILLING CODE 4910-FE-P

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

#### Agency Pilot Program; Activity Under Review; T-100 Traffic Reporting by Alaskan Mail Air Carriers

**AGENCY:** Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** At a September 15, 2004, joint meeting, representative Alaskan air carriers, the United States Postal Service (USPS), and the Department of Transportation's (DOT) Bureau of Transportation Statistics (BTS) and Office of Secretary, agreed to develop a pilot program for collecting weekly T-100 data, in an effort to reduce air carrier reporting burden.

Currently, air carriers transporting non-priority bypass mail pursuant to the Rural service Improvement act (RSIA) are required to submit monthly T-100 traffic reports to BTS and daily activity reports to USPS, which uses the daily report to monitor air carrier compliance with RSIA's requirements that air carriers provide service at least three days a week and exhibit adherence to those scheduled flights. Some carriers hired additional staff to complete the daily activity reports. If BTS adds two new data elements to the T-100 report and requires weekly submissions (due within 7 days after weeks end), both DOT's and USPS' data needs can be met. The two new data elements are: (1) Actual Day of Flight: the numeric day of the month in which the flight was flown; and (2) Aircraft Certification: A code to identify the type of mail operation, i.e., Bush Part 121, Bush Part 135, Bush Amphibious or Mainline.

The pilot program will start on November 1, 2004. The carriers that participate in the pilot program will be relieved of the requirement to submit daily activity reports to USPS. If all parties are satisfied with the new data reporting, the pilot program will end with respect to data for December 31, 2004, and thereafter all Alaskan air carriers will be required to submit the weekly T-100 reports in lieu of the USPS daily activity reports.

A representative sample of Alaskan air carriers (anticipated to comprise no more than nine) will be selected from those who volunteer. Carriers may volunteer for the program by contacting Ms. Jennifer Fabrizi at [Jennifer.fabrizi@bts.gov](mailto:Jennifer.fabrizi@bts.gov) or (202) 366-8513 no sooner than the publication date of this notice and no later than October 29, 2004.

**DATES:** Written comments on the pilot program should be submitted by November 15, 2004.

**ADDRESSES:** Comments should be directed to: Office of Airline Information, K-25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590-0001, FAX NO. (202) 366-3383 or EMAIL [bernard.stankus@bts.gov](mailto:bernard.stankus@bts.gov).

**Comments:** Comments should identify the T-100 Pilot Program. Persons wishing the BTS to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138-0013. The postcard will be date/time stamped and returned.

**FOR FURTHER INFORMATION CONTACT:**

Bernie Stankus Office of Airline Information, K-25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-4387.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

Alaskan air carriers, who carry non priority bypass mail for the U.S. Postal Service, which currently report "daily" to the USPS, will have one submission requirement to the USDOT/BTS/Office of Airline Information; "Daily" Carrier data submissions to USPS will no longer be required. BTS believes that there may be several advantages to weekly reporting. First, for the air carriers, the total reporting burden will be reduced as carriers will not be required to submit daily data to the USPS and second, for USPS, the agency will be to cease its air carrier data collections and it will have more timely data for mail tender. In addition to collecting data and transmitting it to the USPS on a weekly basis, BTS will combine the weekly data submissions to produce the standard T-100 monthly traffic reports in the format currently being released today. The new data items, date of flight and certification code, will not be included in the BTS products, on the BTS web

page and publications sold to the general public. The air carriers requested that BTS share the additional data only with the USPS because the data is viewed as competitive sensitive.

**2. New Reporting Requirements**

Alaskan Air Carriers, who carry non priority bypass mail for the U.S. Postal Service, will submit T-100 Market and T-100 Segment records, weekly, to USDOT/BTS/Office of Airline Information (OAI)—covering a 7-day period, defined as Saturday through Friday. The T-100 Data will be due in to BTS/OAI, 7 days after the end of the period. BTS is establishing a secure password protected line for submitting pilot program data. Additional data elements will be added to the T-100 data formats:

- Actual Date of Flight field to Segment records.
- Actual Date of Flight field to Market records.
- Aircraft Certification Code field to Segment records.

Aircraft Certification Code values:

121—Bush Part 121  
135—Bush Part 135  
AMPH—Bush Part 135 or 121  
Amphibious  
MAIN—Mainline

For purposes of monitoring carrier flight performance, the USPS will receive weekly Carrier Segment reports containing all scheduled service records, from the BTS/OAI, within 4 days after initial carrier submissions are due (i.e. 7 days of flight performance reported to BTS/OAI within 7 days after the end of the period, and subsequently forwarded to USPS within the next 4 days). BTS/OAI will process the weekly reports as they are received and confer with carriers concerning suspect or erroneous data and any needed re-submissions. BTS/OAI will consolidate the weekly reports into the monthly final "Products" for release to the public and to the USPS for calculation of mail tender in accordance with RSIA. Market shares will continue to be calculated

monthly for "re-casting" of RSIA air carrier mail pools.

Administrative actions for not submitting weekly reports on a timely basis will be defined by BTS/USPS and could include USPS withholding of mail tender until the air carrier corrects the reporting situation. Administrative actions for not reporting corrected data to BTS in a timely manner will be defined by BTS and could include BTS withholding carrier data from final monthly release of statistics to USPS.

**3. The "Pilot Program"**

The new reports will start on a trial basis with a group selected from volunteer Alaskan air carriers while BTS confers with OMB on paperwork burden and other information collection issues. BTS will identify an initial group of Alaskan air carriers to begin testing from the group of carriers who have volunteered to participate in the pilot program as described in the Summary. Beginning with November 2004 data, the selected Alaskan air carriers will report T-100 Market and Segment data to the Office of Airline Information (OAI) *weekly*. The carriers will have 7 days to report a week's worth of T-100 data to OAI. The intent of the pilot program is to decrease air carrier reporting burden.

OAI will compile all Segment data, for all of the Carriers, on that next Monday (except for Federal holidays) and transmit the Segment Data to USPS through the process currently used for sending the Monthly USPS T-100 Market and Segment Products to USPS.

It should be noted that all Alaskan air carriers, including carriers selected for the pilot program, must report their October 2004 T-100 data to OAI by November 30th, per the current reporting requirements. Until the new T-100 reporting is fully implemented for ALL Alaskan air carriers who carry non priority bypass mail, the USPS will continue to receive its "Monthly Products" per the current schedule.

**PILOT PROGRAM SCHEDULE**

Week number	Report period	Date/time report is due into OAI	Date OAI will compile a segment file, containing scheduled service	Date USPS will receive data needed to verify compliance
Week One .....	First Submission: Data will be for five (5) days, Monday, 11/1/2004 through Friday, 11/5/2004.	This first submission will be a partial week of data. Due into OAI by Midnight (EST), Sunday, 11/14/2004.	Monday, 11/15/2004 .....	Monday, 11/15/2004—ten (10) days after the week ending 11/5/2004.
Week Two .....	Saturday, 11/6/2004 through Friday, 11/12/2004.	Due into OAI by Midnight (EST), Sunday, 11/21/2004.	Monday, 11/22/2004 .....	Monday, 11/22/2004—ten (10) days after the week ending 11/12/2004.

## PILOT PROGRAM SCHEDULE—Continued

Week number	Report period	Date/time report is due into OAI	Date OAI will compile a segment file, containing scheduled service	Date USPS will receive data needed to verify compliance
Week Three .....	Saturday, 11/13/2004 through Friday, 11/19/2004.	Due into OAI by Mid-night (EST), Sunday, 11/28/2004.	Monday, 11/29/2004 .....	Monday, 11/29/2004—ten (10) days after the week ending 11/12/2004.
Week Four .....	Saturday, 11/20/2004 through Friday, 11/26/2004.	Due into OAI by Mid-night (EST), Sunday, 12/5/2004.	Monday, 12/6/2004 .....	Monday, 12/6/2004—ten (10) days after the week ending 11/26/2004.
Week Five .....	Saturday, 11/27/2004 through Friday, 12/3/2004.	Due into OAI by Mid-night (EST), Sunday, 12/12/2004.	Monday, 12/13/2004 .....	Monday, 12/13/2004—ten (10) days after the week ending 12/3/2004.
Week Six .....	Saturday, 12/4/2004 through Friday, 12/10/2004.	Due into OAI by Mid-night (EST), Sunday, 12/19/2004.	Monday, 12/20/2004 .....	Monday, 12/20/2004—ten (10) days after the week ending 12/10/2004.
Week Seven .....	Saturday, 12/11/2004 through Friday, 12/17/2004.	Because Friday, 12/24/2004 is a Federal Holiday, data will be due into OAI by Mid-night (EST), Monday, 12/27/2004.	Tuesday, 12/28/2004 .....	Tuesday, 12/28/2004—eleven (11) days after the week ending 12/17/2004.
Week Eight .....	Saturday, 12/18/2004 through Friday, 12/24/2004.	Because Friday, 12/31/2004 is a Federal Holiday, data will be due into OAI by Mid-night (EST), Monday, 1/3/2005.	Tuesday, 1/4/2005 .....	Tuesday, 1/4/2005—eleven (11) days after the week ending 12/24/2004.
Week Nine .....	Saturday, 12/25/2004 through Friday, 12/31/2004.	Due into OAI by Mid-night (EST), Sunday, 1/9/2005.	Monday, 1/10/2005 .....	Monday, 1/10/2005—ten (10) days after the week ending 12/31/2004.

Beginning with the JANUARY 2005 data, if all issues regarding the new reporting procedures are resolved, ALL Alaskan air carriers (who carry mail) will commence reporting T-100 Market and Segment data.

Week Ten .....	Saturday, 1/1/2004 through Friday, 1/7/2004.	Due into OIA by Mid-night (EST), Sunday, 1/16/2005.	Because Monday, 1/17/2004 is a Federal Holiday, OAI will compile the Segment data on Tuesday, 1/18/2005.	Tuesday, 1/18/2005—eleven (11) days after the week ending 1/7/2004.
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### T-100 SEGMENT FILE—NAMING CONVENTION and FILE TYPE

The Segment File naming convention is “CC\_SegCCYY\_MM\_DD.csv” where:

CC—Carrier Alpha Code

Seg—Indicates that file contains segment data

CCYY—4 digit year

MM—Month

DD—Week Ending—Friday

.csv—comma separated variable file type.

(Note: The .csv extension indicates a comma separated variable file type—where commas separate each value in a record.)

Example: NC\_Seg2004\_11\_05.csv =

NORTHERN AIR CARGO Segment data for week ending November 5, 2004

The first “record” listed below indicates each of the fields in the records that follow. There are sixteen (16) data records in the sample file below. Each data value is separated by a comma.

Sample Segment file submission for:

NC\_Seg2004\_11\_05.csv

DATA TYPE, ENTITY CODE, YEAR, MONTH, ACTUAL DAY OF FLIGHT, ORIG AIRPORT, DEST AIRPORT, SERVICE CLASS, AIRCRAFT TYPE, CABIN CONFIG, DEPARTURES PERF, AVAILABLE PAYLOAD, AVAILABLE SEATS, SEG PASSENGERS, SEG FREIGHT, SEG MAIL, SCHED DEPARTURES, R TO R MINUTES, AIRB MINUTES, AIRCRAFT CONFIG  
 S,6721,2004,10,29,ANC,FAI,G,216,2,5,134400,0,0,37589,19299,,447,343,121  
 S,6721,2004,10,29,ANC,FAI,G,711,2,18,696474,0,0,177887,121440,21,937,724,121  
 S,6721,2004,10,30,ANC,FAI,G,216,2,5,134400,0,0,37589,19299,,447,343,121  
 S,6721,2004,10,30,ANC,FAI,G,711,2,18,696474,0,0,177887,121440,21,937,724,121  
 S,6721,2004,10,31,ANC,FAI,G,216,2,5,134400,0,0,37589,19299,,447,343,121  
 S,6721,2004,10,31,ANC,FAI,G,711,2,18,696474,0,0,177887,121440,21,937,724,121  
 S,6721,2004,11,1,ANC,FAI,G,216,2,5,

134400,0,0,37589,19299,,447,343,121  
 S,6721,2004,11,1,ANC,FAI,G,711,2,18,696474,0,0,177887,121440,21,937,724,121  
 S,6721,2004,11,2,ANC,FAI,G,216,2,5,134400,0,0,37589,19299,,447,343,121  
 S,6721,2004,11,2,ANC,FAI,G,711,2,18,696474,0,0,177887,121440,21,937,724,121  
 S,6721,2004,11,3,ANC,FAI,G,216,2,5,134400,0,0,37589,19299,,447,343,121  
 S,6721,2004,11,3,ANC,FAI,G,711,2,18,696474,0,0,177887,121440,21,937,724,121  
 S,6721,2004,11,4,ANC,FAI,G,216,2,5,134400,0,0,37589,19299,,447,343,121  
 S,6721,2004,11,4,ANC,FAI,G,711,2,18,696474,0,0,177887,121440,21,937,724,121  
 S,6721,2004,11,5,ANC,FAI,G,216,2,5,134400,0,0,37589,19299,,447,343,121  
 S,6721,2004,11,5,ANC,FAI,G,711,2,18,696474,0,0,177887,121440,21,937,724,121

## T-100 SEGMENT FILE.—RECORD LAYOUT AND FIELD DESCRIPTION

	Field name	Field length	Data type	Description
1 .....	Data Type .....	1	Character .....	"S" is used for segment data.
2 .....	Entity Code .....	5	Character .....	A five-character code assigned to each air carrier that is used primarily for DOT reporting purposes. It is used to separate the Domestic, Atlantic, Latin America, and Pacific operations of each air carrier.
3 .....	Reporting Year .....	4	Numeric .....	Format: CCYY = century and year.
4 .....	Reporting Month .....	Up to 2	Numeric .....	Format: MM: 1 = January * * * 12 = December.
5 .....	Actual Day of Flight .....	Up to 2	Numeric .....	The numeric day of the month in which the flight was flown Format DD: * * * 1 = day one of the month * * * 31 = day thirty-one of the month.
6 .....	Origin Airport .....	3	Character .....	The three letter code identifying the airport. The airport codes are recognized by the International Air Transport Association (IATA), as used in all of the major airline reservation systems—OR—when there is no IATA code for an origin airport/point—contact the BTS/Office of Airline Information, and one will be assigned.
7 .....	Destination Airport .....	3	Character .....	The three letter code identifying the airport. The airport codes are recognized by the International Air Transport Association (IATA), as used in all of the major airline reservation systems—OR—when there is no IATA code for the destination airport/point—contact the BTS/Office of Airline Information, and one will be assigned.
8 .....	Service Class .....	1	Character .....	Refers to the class of service used.: F—Scheduled Passenger/Cargo Service; G—Scheduled All Cargo Service; L—Non-Scheduled Civilian Passenger/Cargo Service; P—Non-Scheduled Civilian All Cargo Service; N—Non-Scheduled Military Passenger/Cargo Service; R—Non-Scheduled Military All Cargo Service.
9 .....	Aircraft Type .....	3	Number .....	Type of aircraft used on the non-stop segment.
10 .....	Cabin Configuration .....	1	Number .....	This code indicates the type of configuration: 1—Passenger; 2—Cargo; 3—Passenger/Cargo; 4—Amphibious.
11 .....	Departures Performed .....	Up to 5	Number .....	The number of revenue aircraft departures performed in revenue scheduled service.
12 .....	Available Payload .....	Up to 10	Number .....	Reflects total available capacity in pounds for passengers, freight, and mail applicable to the aircraft with which this flight is performed.
13 .....	Available Seats .....	Up to 7	Number .....	Reflects the actual number of seats for sale, excluding those blocked for safety or operational reasons.
14 .....	Segment Passengers .....	Up to 10	Number .....	Number of passengers originating (enplaning) the flight at the origin airport of the segment and terminating (deplaning) the flight at the destination airport of the segment.
15 .....	Segment Freight .....	Up to 10	Number .....	Amount of Freight—in pounds—originating (enplaning) the flight at the origin airport of the segment and terminating (deplaning) the flight at the destination airport of the segment.
16 .....	Segment Mail .....	Up to 10	Number .....	Amount of Mail—in pounds—originating (enplaning) the flight at the origin airport of the segment and terminating (deplaning) the flight at the destination airport of the segment.
17 .....	Scheduled Departures .....	Up to 5	Number .....	The number of aircraft departures scheduled, whether or not actually performed.
18 .....	Ramp to Ramp Minutes .....	Up to 10	Number .....	Is the total elapsed time computed from the moment the aircraft moves under its own power until it comes to rest at the next point of landing.
19 .....	Airborne Time .....	Up to 10	Number .....	Is the elapsed time computed from the moment the aircraft leaves the ground until it touches down at the next point of landing.
20 .....	Aircraft Certification .....	Up to 4	Character .....	This 3 or 4 character code indicates the type of Certification: 121—121 (wheels); 135—135 (wheels); AMPH—135 or 121 Amphibious; MAIN—Mainline.

**T-100 MARKET FILE—NAMING CONVENTION and FILE TYPE**

The Market File naming convention is "CC\_Mkt\_MM\_DD.csv" where:

CC—Carrier Alpha Code

Mkt—Indicates that file contains market data

CCYY—4 digit year

MM—Month

DD—Week Ending—Friday

.csv—comma separated variable file type.

(Note: The .csv extension indicates a comma separated variable file type—where commas separate each value in a record.)

Example: NC\_Mkt2004\_11\_05.csv =  
NORTHERN AIR CARGO Market data for  
week ending November 5, 2004

The first "record" listed below indicates each of the fields in the records that follow. There are eight (8) data records in the sample file below. Each data value is separated by a comma.

**Sample Market File Submission for:  
NC\_Mkt2004\_11\_05.csv**

DATA TYPE, ENTITY CODE

YEAR, MONTH, ACTUAL DAY OF FLIGHT

ORIG AIRPORT, DEST AIRPORT, SERVICE

CLASS,

MKT PAX, MKT FREIGHT, MKT MAIL

M,6721,2004,10,29,ANC,FAI,G,0,32724,  
140739  
M,6721,2004,10,30,ANC,FAI,G,0,32500,  
140650  
M,6721,2004,10,31,ANC,FAI,G,0,32720,  
140725  
M,6721,2004,10,1,ANC,FAI,G,0,32600,  
140690  
M,6721,2004,10,2,ANC,FAI,G,0,32730,  
140732  
M,6721,2004,10,3,ANC,FAI,G,0,32700,  
140754  
M,6721,2004,10,4,ANC,FAI,G,0,32740,  
140736  
M,6721,2004,10,5,ANC,FAI,G,0,32400,  
140738

**T-100 MARKET FILE.—RECORD LAYOUT AND FIELD DESCRIPTION**

	Field name	Field length	Data type	Description
1 .....	Data Type .....	1	Character .....	"M" is used for market data.
2 .....	Entity Code .....	5	Character .....	A five-character code assigned to each air carrier that is used primarily for DOT reporting purposes. It is used to separate the Domestic, Atlantic, Latin America, and Pacific operations of each air carrier.
3 .....	Year .....	4	Numeric .....	Format: CCYY = century and year.
4 .....	Month .....	2	Numeric .....	Format: MM: 01 = January * * * 12 = December.
5 .....	Actual Day of Flight .....	Up to 2	Numeric .....	The numeric day of the month in which the flight was flown, Format DD: * * * 1 = day one of the month * * * 31 = day thirty-one of the month.
6 .....	Origin Airport .....	3	Character .....	The three letter code identifying the airport. The airport codes are recognized by the International Air Transport Association (IATA), as used in all of the major airline reservation systems—OR—when there is no IATA code for an origin airport/point—contact the BTS/Office of Airline Information, and one will be assigned.
7 .....	Destination Airport .....	3	Character .....	The three letter code identifying the airport. The airport codes are recognized by the International Air Transport Association (IATA), as used in all of the major airline reservation systems—OR—when there is no IATA code for the destination airport/point—contact the BTS/Office of Airline Information, and one will be assigned.
8 .....	Service Class .....	1	Character .....	The Service Class Code refers to the class of service used. F—Scheduled Passenger/Cargo Service; G—Scheduled All Cargo Service; L—Non-Scheduled Civilian Passenger/Cargo Service; P—Non-Scheduled Civilian All Cargo Service; N—Non-Scheduled Military Passenger/Cargo Service; R—Non-Scheduled Military All Cargo Service.
9 .....	Market Passengers .....	Up to 7	Numeric .....	Number of Passengers originating (enplaning) the flight at the origin airport and terminating (deplaning) the flight at the destination airport.
10 .....	Market Freight .....	Up to 7	Numeric .....	Amount of Freight—in pounds—originating (enplaning) the flight at the origin airport and terminating (deplaning) the flight at the destination airport.

Comments are requested concerning whether (a) the continuation of T-100 is necessary for DOT to carry out its mission of promoting air transportation; (b) BTS is accurately estimating the reporting burden; (c) are there other ways to enhance the quality, use and clarity of the data collected; and (d) are there additional ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the T-100 traffic information it collects for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to USPS and other agencies

outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on October 6, 2004.

**Donald W. Bright,**

*Assistant Director, Airline Information,  
Bureau of Transportation Statistics.*

[FR Doc. 04-23089 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-62-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment  
Request for Revenue Procedure 2004–59**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–59; Offer to Resolve Issues Arising from Certain Tax, Withholding, and Reporting Obligations of U.S. Withholding Agents with Respect to Payments to Foreign Persons.

**DATES:** Written comments should be received on or before December 13, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Paul H. Finger, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal

Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at [CAROL.A.SAVAGE@irs.gov](mailto:CAROL.A.SAVAGE@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Offer to Resolve Issues Arising from Certain Tax, Withholding, and Reporting Obligations of U.S. Agents with Respect to Payments to Foreign Persons.

*OMB Number:* 1545–1901.

*Revenue Procedure Number:* Revenue Procedure 2004–59.

*Abstract:* Revenue Procedure 2004–59 describes the section 1441 Voluntary Compliance Program (“VCP”), which is available to certain withholding agents with respect to the payment, withholding, and reporting of certain taxes due on payments made to foreign persons.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Annual Average Time Per Respondent:* 400 hours.

*Estimated Total Annual Hours:* 200,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 8, 2004.

**Paul H. Finger,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–23090 Filed 10–13–04; 8:45 am]

**BILLING CODE 4830–01–P**

# Corrections

Federal Register

Vol. 69, No. 198

Thursday, October 14, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### National Program To Promote Diabetes Education Strategies in Minority Communities: The National Diabetes Education Program

##### *Correction*

In notice document 04-22259 beginning on page 59231 in the issue of Monday, October 4, 2004, make the following correction:

On page 59237, in the first column, in the second and third lines, “(770) 448-5035” should read, “(770) 488-5035”.

[FR Doc. C4-22259 Filed 10-13-04; 8:45 am]

BILLING CODE 1505-01-D

## POSTAL SERVICE

### 39 CFR Part 501

#### Authorization to Manufacture and Distribute Postage Meters

##### *Correction*

In rule document 04-22234 beginning on page 60090 in the issue of Thursday, October 7, 2004, make the following correction:

##### **§ 501.1 [Corrected]**

On page 60090, in § 501.1(a), in the sixth line, “Postage” should read “Postage®”.

[FR Doc. C4-22234 Filed 10-13-04; 8:45 am]

BILLING CODE 1505-01-D



# Federal Register

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**Thursday,  
October 14, 2004**

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**Part II**

**State Justice Institute**

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**Grant Guideline; Notice**

## STATE JUSTICE INSTITUTE

### Grant Guideline

**AGENCY:** State Justice Institute.

**ACTION:** Proposed grant Guideline.

**SUMMARY:** This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2005 State Justice Institute grants, cooperative agreements, and contracts.

**DATES:** The Institute invites public comment on the Guideline until November 15, 2004.

**ADDRESSES:** Comments should be mailed to the State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314 or e-mailed to [kschwartz@statejustice.org](mailto:kschwartz@statejustice.org).

**FOR FURTHER INFORMATION CONTACT:** David I. Tevelin, Executive Director, or Kathy Schwartz, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684-6100.

**SUPPLEMENTARY INFORMATION:** Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701 *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Pending appropriations legislation passed by the House (HR 4754) would appropriate \$2.227 million to SJI in FY 2005; the Senate Appropriations Committee proposes to appropriate \$3 million. An Interagency Agreement (IAA) with the Department of Justice's Office on Violence Against Women will provide up to \$420,000 to support projects aimed at educating judges about rape and sexual assault. Other sources of funds available to SJI in FY 2005 are expected to include an IAA with the Department of Justice's Bureau of Justice Assistance, under which up to \$4 million may be transferred to SJI to support several specific projects, and amounts deobligated from expired grants, which are not expected to exceed \$100,000.

After deducting the Institute's modest administrative expenses, and amounts allocated for SJI's three small grant programs—Technical Assistance (\$300,000), Judicial Branch Education Technical Assistance (\$100,000) and Scholarships (\$200,000)—SJI anticipates that little, if any, money will be available in FY 2005 to support Project Grants other than those within the scope of the IAA's noted above and

continuations of existing Project Grants. As a result, the Institute's Board of Directors proposes to dedicate the amount available for Project Grants this fiscal year to continuing the most important Project Grants currently assisting courts nationwide. To the extent that additional funding becomes available over the course of the fiscal year, the Board of Directors may identify other projects of interest and invite selected applicants to apply for grants to carry them out. If additional funding does not become available, SJI proposes to award no new Project Grants in FY 2005 other than those that may be awarded within the scope of the Interagency Agreements noted above.

The Board of Directors invites comment on this approach as well as other possible approaches that would maximize the potential benefit of the limited grant funds available to SJI.

### Types of Grants Available and Funding Schedules

SJI proposes to offer four types of grants in FY 2005: Continuation Grants, Technical Assistance (TA) Grants, Judicial Branch Education Technical Assistance (JBE TA) grants, and Scholarships. As noted above, to the extent sufficient additional funding becomes available, the Institute may also offer selected applicants the opportunity to apply for new Project Grants.

**Continuation Grants.** Continuation Grants (*see* sections II.A., III.D., V.B.1., and VI.A.) are intended to enhance the specific program or service begun during an earlier Project Grant period. An applicant for a Continuation Grant must submit a letter notifying the Institute of its intent to seek such funding no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its Continuation Grant application.

**Technical Assistance Grants.** Section II.B. reserves up to \$300,000 for Technical Assistance Grants. Under this program, a State or local court or court association may receive a grant of up to \$30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. Court associations' eligibility for TA grants is new this fiscal year.

Letters of application for a Technical Assistance Grant may be submitted at any time. Applicants submitting letters by January 7, 2005, will be notified by April 8, 2005; those submitting letters between January 8 and February 25, 2005, will be notified by June 10, 2005; those submitting letters between

February 26 and June 3, 2005, will be notified by August 19, 2005; and those submitting letters between June 4 and September 23, 2005, will be notified of the Board's decision by December 2, 2005. *See* section VI.B. for Technical Assistance Grant application procedures.

**Judicial Branch Education Technical Assistance Grants.** Section II.C. of the Guideline allocates up to \$100,000 for grants under the JBE TA grant program this year. Grants of up to \$20,000 are available to: (1) Enable a State or local court to adapt and deliver an education program that was previously developed and evaluated under an SJI project grant (*i.e.*, curriculum adaptation); and/or (2) support expert consultation in planning, developing, and administering State judicial branch education programs.

Letters requesting JBE TA Grants may be submitted at any time. The grant cycles for JBE TA Grants are the same as the grant cycles for TA Grants:

Applicants submitting letters by January 7, 2005, will be notified by April 8, 2005; those submitting letters between January 8 and February 25, 2005, will be notified by June 10, 2005; those submitting letters between February 26 and June 3, 2005, will be notified by August 19, 2005; and those submitting letters between June 4 and September 23, 2005, will be notified of the Board's decision by December 2, 2005. *See* section VI.C. for JBE TA Grant application procedures.

**Scholarships.** Section II.D. of the Guideline allocates up to \$200,000 of FY 2005 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. A scholarship of up to \$1,500 may be awarded to pay for a recipient's tuition, travel, and lodging costs.

Scholarships for eligible applicants are approved largely on a "first come, first served" basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (*e.g.*, trial judge, appellate judge, trial court administrator). Scholarships will be approved only for programs that either (1) enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel.

The Proposed Guideline would also limit recipients to no more than one scholarship in a three-year period.

Applicants interested in obtaining a scholarship for a program beginning between January 1 and March 31, 2005, must submit their applications and documents between October 4 and

November 29, 2004. For programs beginning between April 1 and June 30, 2005, applicants must submit their applications and documents between January 3 and February 28, 2005. For programs beginning between July 1 and September 30, 2005, the applications and documents must be submitted between April 1 and May 27, 2005. For programs beginning between October 1 and December 31, 2005, the applications and documents must be submitted between July 5 and August 29, 2005. For programs beginning between January 1 and March 31, 2006, the applications and documents must be submitted between October 3 and November 28, 2005. See section VI.D. for scholarship application procedures.

**Project Grants.** If additional funds become available in FY 2005, the Institute may invite applications for Project Grants to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. SJI may also invite applications for "think piece" Project Grants to support the development of essays of publishable quality that explore emerging issues that could result in significant changes in court processes or judicial administration. "Think pieces" are limited to no more than \$10,000. SJI will inform potential applicants of the application requirements for these grants in their invitation letters.

### Matching Requirements

With the exception of JBE TA grantees, other grantees that can demonstrate a financial hardship, and scholarship recipients, all grantees must provide match, including cash match, for any Institute grant. The matching requirements are summarized in sections III.L. and VIII.A.8. of the Guideline.

The following Grant Guideline is proposed by the State Justice Institute for FY 2005:

### Table of Contents

I. The Mission of the State Justice Institute
II. Scope of the Program
III. Definitions
IV. Eligibility for Award
V. Types of Projects and Grants; Size of Awards
VI. Applications
VII. Application Review Procedures
VIII. Compliance Requirements
IX. Financial Requirements
X. Grant Adjustments
Appendix A—SJI Libraries: Designated Sites and Contacts
Appendix B—Illustrative List of Technical Assistance Grants
Appendix C—Illustrative List of Model Curricula

Appendix D—Grant Application Forms (Forms A, B, C, C1, D, and Disclosure of Lobbying Activities)

Appendix E—Line-Item Budget Form (Form E)

Appendix F—Scholarship Application Forms (Forms S1 and S2)

### I. The Mission of the State Justice Institute

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

and

- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by a Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges; a State court administrator; and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine

their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

### II. Scope of the Program

As set forth in Section I., the Institute is authorized to fund projects addressing a broad range of program areas. However, during FY 2005, the Institute will consider funding only the following:

#### A. Continuation Grants

This category includes critical SJI-supported Project Grants of proven merit to courts nationwide. These projects must have:

1. Developed products, services, and techniques that may be used in States across the country; and
2. Created and disseminated products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

The application procedures for Continuation Grants may be found in section VI.A.

#### B. Technical Assistance Grants

The Board is reserving up to \$300,000 to support the provision of technical assistance to State and local courts and court associations. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. The Institute will reserve sufficient funds each quarter to assure the availability of Technical Assistance Grants throughout the year.

Technical Assistance Grants are limited to no more than \$30,000 each, and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in

replicating; or both. Normally, the technical assistance must be completed within 12 months after the start date of the grant.

Only a State or local court or court association may apply for a Technical Assistance grant. The application procedures may be found in section VI.B.

#### *C. Judicial Branch Education Technical Assistance Projects*

The Board is reserving up to \$100,000 to support technical assistance and on-site consultation in planning, developing, and administering comprehensive and specialized State judicial branch education programs, as well as the adaptation of model curricula previously developed with SJI funds. Judicial Branch Education Technical Assistance Grants are limited to no more than \$20,000 each.

The goals of the Judicial Branch Education Technical Assistance Program (JBE TA) in FY 2005 are to:

1. Provide State and local courts and court associations with the opportunity to access expert strategic assistance to enable them to maintain judicial branch education programming during the current budget crisis; and

2. Enable courts and court associations to modify a model curriculum, course module, or conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; train instructors to present portions or all of the curriculum; and pilot-test it to determine its appropriateness, quality, and effectiveness. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix C.

Only State or local courts or court associations may apply for JBE TA funding. Application procedures may be found in section VI.C. Applicants are not required to contribute cash match to JBE TA grants.

#### *D. Scholarships for Judges and Court Managers*

The Institute is reserving up to \$200,000 to support a scholarship program for State judges and court managers. The purposes of the scholarship program are to:

1. Enhance the skills, knowledge, and abilities of judges and court managers;

2. Enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and

3. Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. Application procedures may be found in Section VI.D.

### **III. Definitions**

The following definitions apply for the purposes of this Guideline:

#### *A. Acknowledgment of SJI Support*

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the opening frames of the videotape identifying the grant number. See section VIII.A.11.a.(2) for the precise wording of the statement.

#### *B. Application*

A formal request for an Institute grant. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed description, not to exceed 25 pages, of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs. See section VI. for a complete description of application submission requirements. See Appendix D for the application forms.

#### *C. Close-out*

The process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

#### *D. Continuation Grant*

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. See section VI.A. for a complete description of Continuation Grant application requirements.

#### *E. Curriculum*

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty.

#### *F. Designated Agency or Council*

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for SJI grant funds and to receive, administer, and be accountable for those funds.

#### *G. Disclaimer*

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with Institute support that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. See section VIII.A.11.a.(2) for the precise wording of this statement.

#### *H. Grant Adjustment*

A change in the design or scope of a project from that described in the approved application, acknowledged in writing by the Institute. See section X.A for a list of the types of changes requiring a formal grant adjustment. Ordinarily, changes requiring a Grant Adjustment (including budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget) should be requested at least 30 days in advance of the implementation of the requested change.

#### *I. Grantee*

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court or its designee.

#### *J. Human Subjects*

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings,

opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

#### *K. Judicial Branch Education Technical Assistance (JBE TA) Grant*

A grant of up to \$20,000 awarded to a State or local court or court association to support expert assistance in designing or delivering judicial branch education programming, and/or the adaptation of an education program based on an SJI-supported curriculum that was previously developed and evaluated under an SJI Project Grant. See section VI.C. for a complete description of JBE TA Grant application requirements.

#### *L. Match*

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project; that portion of the grantee's Federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits); any other reduction in the indirect cost rate to be charged to the grant; and the application of project income (e.g., tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project.

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program.

See section VIII.A.8. for the Institute's matching requirements.

#### *M. Products*

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD-ROM disks.

#### *N. Project Grant*

An initial grant lasting up to 15 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed \$150,000 a year; however, a grant in excess of \$100,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact.

#### *O. Project-Related Income*

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of an Institute grant. Registration and tuition fees, and proceeds from the sale of products generated during the grant period may be counted as match. For a more complete description of different types of project-related income, see section IX.G.

#### *P. Scholarship*

A grant of up to \$1,500 awarded to a judge or court manager to cover the cost of tuition, transportation, and reasonable lodging to attend an out-of-State educational program within the United States. See section VI.D. for a complete description of scholarship application requirements.

#### *Q. Special Condition*

A requirement attached to a grant award that is unique to a particular project.

#### *R. State Supreme Court*

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* means that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

#### *S. Subgrantee*

A State or local court which receives Institute funds through the State Supreme Court.

#### *T. Technical Assistance Grant*

A grant, lasting up to 12 months, of up to \$30,000 to a State or local court or court association to support outside expert assistance in diagnosing a problem and developing and

implementing a response to that problem. See section VI.B. for a complete description of Technical Assistance Grant application requirements.

### **IV. Eligibility for Award**

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.C.2. of this Guideline.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and
2. the applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705 (b)(2)(A)-(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

- a. Nonprofit organizations with expertise in judicial administration;
- b. Institutions of higher education;
- c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and
- d. Private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the

purposes of the State Justice Institute Act.

## V. Types of Projects and Grants; Size of Awards

### A. Types of Projects

The Institute supports the following general types of projects:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

### B. Types of Grants

In FY 2005, the Institute will support the following types of grants:

#### 1. Continuation Grants

See sections II.A., III.D. and VI.A. In FY 2005, the Institute anticipates allocating all of the funds available to support Project Grants to Continuation Grants.

#### 2. Technical Assistance Grants

See sections II.B., III.T., and VI.B. In FY 2005, the Institute is reserving up to \$300,000 for these grants.

#### 3. Judicial Branch Education Technical Assistance Grants

See sections II.C., III.K., and VI.C. In FY 2005, the Institute is reserving up to \$100,000 for Judicial Branch Education Technical Assistance Grants.

#### 4. Scholarships

See sections II.D., III.P., and VI.D. In FY 2005, the Institute is reserving up to \$200,000 for scholarships for judges and court managers.

### C. Maximum Size of Awards

1. Applicants for continuation grants may request funding in amounts up to \$150,000 for 15 months.

2. Applicants for Technical Assistance Grants may request funding in amounts up to \$30,000.

3. Applicants for Judicial Branch Education Technical Assistance Grants may request funding in amounts up to \$20,000.

4. Applicants for scholarships may request funding in amounts up to \$1,500.

### D. Length of Grant Periods

1. Grant periods for continuation projects ordinarily may not exceed 15 months. Absent extraordinary circumstances, no grant will continue for more than five years.

2. Grant periods for Technical Assistance Grants and Judicial Branch Education Technical Assistance Grants ordinarily may not exceed 12 months.

## VI. Applications

### A. Continuation Grants

#### 1. Purpose

Continuation grants are intended to support projects that carry out the same type of activities performed under a previous grant. They are intended to maintain or enhance the specific program or service produced or established during the prior grant period.

#### 2. Limitations

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks. Absent extraordinary circumstances, no grant will continue for more than five years.

#### 3. Letters of Intent

A grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

#### 4. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract, a program narrative, a budget narrative, a Certificate of State Approval—FORM B (if the applicant is a State or local court), a Disclosure of Lobbying Activities form (from applicants other than units of State or local government),

and any necessary appendices. See Appendix D for the application forms. A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

For a summary of the application process, visit the Institute's Web site (<http://www.statejustice.org>) and click on On-Line Tutorials, then Continuation Grant.

#### a. Forms

##### (1) Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in FORM D.

##### (2) Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if the Institute approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

##### (3) Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting \$100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VI.A.4.d. below.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

(4) Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

(5) Disclosure of Lobbying Activities

Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section VIII.A.7. and the Disclosure of Lobbying Activities form in Appendix D.)

b. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

c. Program Narrative

The program narrative for a continuation grant application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should describe the following:

(1) Project Objectives. The applicant should clearly and concisely state what the continuation project is intended to accomplish.

(2) Need for Continuation. The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

(3) Report of Current Project Activities. The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

(4) Evaluation Findings. The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

(5) Tasks, Methods, Staff, and Grantee Capability. The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

(6) Task Schedule. The applicant should present a detailed task schedule and timeline for the next project period.

(7) Other Sources of Support. The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

d. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Changes in the funding level from prior years should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

(1) Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

(2) Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

(3) Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section IX.I.2.c. Prior written Institute approval is required for any consultant rate in excess of \$300 per day; Institute funds may not be used to pay a consultant more than \$900 per day. Honorarium payments must be justified in the same manner as consultant payments.

(4) Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the

basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

#### (5) Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section IX.I.2.b.

#### (6) Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

#### (7) Construction

Construction expenses are prohibited except for the limited purposes set forth in section VIII.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

#### (8) Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

#### (9) Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

#### (10) Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be

included in the budget narrative, along with the bases used to calculate these estimates.

#### (11) Indirect Costs

Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. See sections III.L. and IX.I.4.

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section IX.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement must be attached to the application.

#### (12) Match

State and local units of government must provide match equaling at least 50% of the amount provided by the Institute in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year.

For example, if the Institute awards a State court \$100,000 for the first year of a grant, the court would be required to provide \$50,000 in match. If the second-year grant is also \$100,000, the court would be required to provide \$60,000 in match. A State or local unit of government would have to provide at least 20% of the required match in the form of cash rather than in-kind support (e.g., the value of staff time contributed to the project).

All other grantees must provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization \$100,000 for the first year of a grant, the organization would be required to provide \$25,000 in match. If the second year grant is also \$100,000, the court would be required to provide \$30,000 in match. A non-profit organization must provide at least 10% of the required match in the form of cash.

Applicants that do not contemplate making matching contributions continuously throughout the course of

the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made. (See sections III.L., VIII.A.8., and IX.E.1.)

The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.b.

#### e. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover.

#### f. Submission Requirements

Every applicant must submit an original and three copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either FORM C or C-1); the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

The Institute will notify applicants of the submission deadline when it responds to their letters of intent. A postmark or courier receipt will constitute evidence of the submission date. Please mark Continuation Application on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted without good cause.

#### B. Technical Assistance Grants

##### 1. Purpose and Scope

Technical Assistance Grants are awarded to State and local courts and court associations to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

##### 2. Application Procedures.

For a summary of the application procedures for Technical Assistance Grants, visit the Institute's Web site ([www.statejustice.org](http://www.statejustice.org)) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for Technical Assistance Grants may submit, at any time, an

original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator. Letters from court associations must be signed by the president of the association.

### 3. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the applicant? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to

adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* If a State or local court submits a request for technical assistance, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix D) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

### 4. Budget and Matching State Contribution

A completed Form E, Line-Item Budget Form (see Appendix E), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above \$300 per day must be approved in advance by the Institute, and that no consultant will be paid more than \$900 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested, and 20% of the match provided must be cash. The Institute may waive the match and cash match requirements in certain circumstances. See section VIII.A.8.b.

Recipients of Technical Assistance Grants do not have to submit an audit report but must maintain appropriate

documentation to support expenditures. (See section VIII.A.3.)

### 5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 7, 2005, will be notified of the Institute's decision by April 8, 2005; those submitting letters between January 8 and February 25, 2005, will be notified by June 10, 2005; those submitting letters between February 26 and June 3, 2005, will be notified by August 19, 2005; and those submitting letters between June 4 and September 23, 2005, will be notified by December 2, 2005.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Grant Committee, letters sent under separate cover must be received not less than three weeks prior to the Board meeting at which the technical assistance requests will be considered (i.e., by February 16, April 21, June 30, and October 13, 2005).

### C. Judicial Branch Education Technical Assistance Grants

#### 1. Purpose and Scope

Judicial Branch Education Technical Assistance (JBE TA) Grants are awarded to State and local courts and court associations to support: (1) The provision of expert strategic assistance designed to enable them to present judicial branch education programs; and/or (2) replication or modification of a model training program originally developed with Institute funds. Ordinarily, the Institute will support the adaptation of a specific curriculum once (i.e., with one grant) in a given State.

JBE TA Grants may support consultant assistance in maintaining or developing systematic or innovative judicial branch educational programming. The assistance might include expert consultation in developing strategic plans to ensure the continued provision of judicial branch education programming despite fiscal constraints; development of improved methods for assessing the need for, and evaluating the quality and impact of, court education programs and their

administration by State or local courts; faculty development; and/or topical program presentations. Such assistance may be tailored to address the needs of a particular State or local court or specific categories of court employees throughout a State or in a region.

## 2. Application Procedures

For a summary of the application procedures for Judicial Branch Education Technical Assistance Grants, visit the Institute's Web site (<http://www.statejustice.org>) and click on On-Line Tutorials, then Judicial Branch Education Technical Assistance Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter.

## Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

### a. For on-site consultant assistance:

(1) *Need for Funding.* What is the critical judicial branch educational need facing the court or association? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

(2) *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What specific tasks would the consultant(s) and court staff or association members undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or affiliated with the association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a

detailed written report to the court and the Institute upon completion of the technical assistance.

### (3) *Likelihood of Implementation.*

What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court or association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the applicant, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) *Support for the Project from the State Supreme Court or its Designated Agency or Council.* If a State or local court submits an application, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix D) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

### b. For adaptation of a curriculum:

(1) *Project Description.* What is the title of the model curriculum to be adapted and who originally developed it with Institute funding? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (e.g., from across the State, from a single local jurisdiction, from a multi-State region)?

(2) *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or

local funds, once it has been successfully adapted and tested?

### (3) *Likelihood of Implementation.*

What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.)

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? (Applicants may demonstrate this by attaching letters of support.)

(5) *Chief Justice's Concurrence.* Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Appendix D, FORM B.)

## 4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix E) and a budget narrative (see A.4.d. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with other awards to State or local courts, match must be provided in an amount equal to at least 50% of the grant amount requested. Recipients of JBE TA grants are not required to provide a cash match. The Institute may waive the match requirements in certain circumstances. See section VIII.A.8.b.

## 5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters by January 7, 2005, will be notified of the Institute's decision by April 8, 2005; those submitting letters between January 8 and February 25, 2005, will be notified by June 10, 2005; those submitting letters between February 26 and June 3, 2005, will be notified by August 19, 2005; and those submitting letters between June 4 and September 23, 2005, will be notified by December 2, 2005.

For curriculum adaptation requests, applicants should allow at least 60 days between the notification deadline and

the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in June 2005 should submit its application no later than January 7, 2005, in time for the Board's decision by April 8, 2005.

#### *D. Scholarships*

##### 1. Purpose and Scope

The purposes of the Institute's scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an educational program in another State. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition, transportation, and reasonable lodging expenses (not to exceed \$150 per night, including taxes). Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (e.g., reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive \$.375/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition, transportation, and lodging expenses in excess of \$1,500 and other costs of attending the program—such as meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is

approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

##### 2. Eligibility Requirements

For a summary of the scholarship award process, visit the Institute's Web site at <http://www.statejustice.org> and click on On-Line Tutorials, then Scholarship.

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A scholarship can be awarded only for a course presented in a State other than the one in which the applicant resides or works. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

c. *Limitation.* Applicants may not receive more than one scholarship in a three-year period.

##### 3. Forms

a. Scholarship Application—FORM S1 (Appendix F)

The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted.

b. Scholarship Application Concurrence—FORM S2 (Appendix F)

Judges and court managers applying for scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix F). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

##### 4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

October 4 and November 29, 2004, for programs beginning between January 1 and March 31, 2005;

January 3 and February 28, 2005, for programs beginning between April 1 and June 30, 2005;

April 1 and May 27, 2005, for programs beginning between July 1 and September 30, 2005;

July 5 and August 29, 2005, for programs beginning between October 1 and December 31, 2005; and

October 3 and November 28, 2005, for programs beginning between January 1 and March 31, 2006.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

## **VII. Application Review Procedures**

### *A. Preliminary Inquiries*

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

### *B. Selection Criteria*

#### 1. Continuation Grant Applications

a. Continuation Grant applications will be rated on the basis of the criteria

set forth below. The Institute will accord the greatest weight to the following criteria:

- (1) The soundness of the methodology;
- (2) The demonstration of need for the project;
- (3) The appropriateness of the proposed evaluation design;
- (4) The key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;
- (5) The applicant's management plan and organizational capabilities;
- (6) The qualifications of the project's staff;
- (7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;
- (8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;
- (9) The reasonableness of the proposed budget; and
- (10) The demonstration of cooperation and support of other agencies that may be affected by the project.

b. In determining which projects to support, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see section IV.); the availability of financial assistance from other sources for the project; the amount and nature (cash and in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

## 2. Technical Assistance Grant Applications

Technical Assistance Grant applications will be rated on the basis of the following criteria:

- a. Whether the assistance would address a critical need of the applicant;
- b. The soundness of the technical assistance approach to the problem;
- c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);
- d. The commitment of the court or association to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

## 3. Judicial Branch Education Technical Assistance Grant Applications

Judicial Branch Education Technical Assistance Grant applications will be rated on the basis of the following criteria:

- a. For on-site consultant assistance:
  - (1) Whether the assistance would address a critical need of the court or association;
  - (2) The soundness of the technical assistance approach to the problem;
  - (3) The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);
  - (4) The commitment of the court or association to act on the consultant's recommendations; and
  - (5) The reasonableness of the proposed budget.
- b. For curriculum adaptation projects:
  - (1) The goals and objectives of the proposed project;
  - (2) The need for outside funding to support the program;
  - (3) The appropriateness of the approach in achieving the project's educational objectives;
  - (4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and
  - (5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

## 4. Scholarships

Scholarships will be awarded on the basis of:

- a. The date on which the application and concurrence (and support letter, if required) were sent;
- b. The unavailability of State or local funds to cover the costs of attending the program or scholarship funds from another source;
- c. The absence of educational programs in the applicant's State

addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

## C. Review and Approval Process

### 1. Continuation Grant Applications

The Institute's Board of Directors will review the applications competitively. The Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion. The staff will present the narrative summaries and rating sheets to the Board for its review. The Board will review all application summaries and decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the Institute.

### 2. Technical Assistance and Judicial Branch Education Technical Assistance Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. The Board of Directors has delegated its authority to approve Technical Assistance and Judicial Branch Education Technical Assistance Grants to the committee established for each program. The committee will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of the Institute.

### 3. Scholarships

A committee of the Institute's Board of Directors will review scholarship applications quarterly. The Board of Directors has delegated its authority to approve scholarships to the committee established for the program. The committee will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of the Institute.

*D. Return Policy*

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

*E. Notification of Board Decision*

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

*F. Response to Notification of Approval*

With the exception of those approved for scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration.

**VIII. Compliance Requirements**

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

*A. Recipients of Project and Continuation Grants***1. Advocacy**

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

**2. Approval of Key Staff**

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

**3. Audit**

Recipients of project and continuation grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles. (See section IX.K. of the Guideline for the requirements of such audits.) Scholarship recipients, Judicial Branch Education Technical Assistance Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures.

**4. Budget Revisions**

Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval.

**5. Conflict of Interest**

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement

concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

**6. Inventions and Patents**

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

**7. Lobbying**

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on

the specific subject matter of the application.

#### 8. Matching Requirements

All grantees other than scholarship recipients and individuals who receive "think piece" grants are required to provide match. See section III.L. for the definition of match. The amount and nature of required match depends on the type of organization receiving the grant and the duration of the Institute's support.

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section IX.E.1.).

The Board of Directors considers the amount and nature of unrequired match contributed by applicants in making grant decisions. Cash match and non-cash match may be provided, subject to the requirements of subsection a. below.

##### a. Continuation Grants

All grantees are required to assume a greater share of project support over time.

(1) *State and local units of government.* State and local units of government are required to provide match equaling at least 50% of the amount provided by SJI in the first year of the project, 60% in the second year, 75% in the third year, 90% in the fourth year, and 100% in the fifth year. For example, if SJI awards a State court \$100,000 for the first year of a grant, the court would be required to provide \$50,000 in match. If the second-year grant is also \$100,000, the court is required to provide \$60,000 in match. A court that wishes to limit its second-year contribution to \$50,000 may ask the Institute for a reduced amount, *i.e.*, \$83,333, in order to meet the 60% requirement.

(2) *All other grantees.* All other grantees are required to provide match equaling at least 25% of the amount provided by the Institute in the first year of the project, 30% in the second year, 37.5% in the third year, 45% in the fourth year, and 50% in the fifth year. For example, if the Institute awards a non-profit organization \$100,000 for the first year of a grant, the organization must provide \$25,000 in match. If the second-year grant is also \$100,000, the grantee is required to provide \$30,000 in match. An organization that wishes to limit its second-year contribution to \$25,000 may ask the Institute for a

reduced amount, *i.e.*, \$83,333, in order to meet the 30% requirement.

##### b. Waiver

###### (1) *Match generally.*

(a) The match requirement for State and local units of government may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State and approval by the Board of Directors. 42 U.S.C. 10705(d).

(b) The match requirement for all other grantees required to provide match may be waived in exceptionally rare circumstances upon the request of an appropriate official and approval by the Board of Directors.

(2) *Cash match.* For all grantees required to provide cash match, the requirement may be waived upon the applicant's demonstration that providing the required cash match will cause the applicant a financial hardship.

(3) The Board of Directors encourages all applicants to provide the maximum amount of in-kind and cash match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process. See section VII.B.1.b.

#### 9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

#### 10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

#### 11. Products

##### a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the

Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: "This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

##### b. Charges for Grant-Related Products/Recovery of Costs

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (*e.g.*, a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than \$25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.O. and IX.G. for requirements regarding project-related income realized during the project period.

#### c. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

#### d. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Judicial Branch Education Technical Assistance grant, in which case submission of 2 copies is required;

(2) An electronic version of the product in .html or .pdf format to the Institute; and

(3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of the libraries is contained in Appendix A. Labels for these libraries are available on the Institute's Web site, <http://www.statejustice.org>.) Grantees that develop web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants are not required to submit final products to State libraries.

(4) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

#### e. Institute Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape or CD-ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

#### f. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

#### 12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

#### 13. Reporting Requirements

a. Recipients of Institute funds other than scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

b. The quarterly Financial Status Report must be submitted in accordance with section IX.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section IX.L.1. of this Guideline.

#### 14. Research

##### a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

##### b. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

##### c. Human Subject Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

#### 15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4).

**16. Supplantation and Construction**

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

**17. Suspension or Termination of Funding**

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

**18. Title to Property**

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of \$1,000 or more shall vest in the Institute, which will direct the disposition of the property.

**B. Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants**

Recipients of Judicial Branch Education Technical Assistance and Technical Assistance Grants must comply with the requirements listed in section VIII.A. (except the requirements pertaining to audits in section VIII.A.3. and product dissemination and approval in section VIII.A.11.d. and e.) and the reporting requirements below:

**1. Judicial Branch Education Technical Assistance Grant Reporting Requirements**

Recipients of Judicial Branch Education Technical Assistance Grants must submit one copy of the manuals, handbooks, conference packets, or consultant's report developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future and/or implement the consultant's recommendations, as well as two copies of the consultant's report.

**2. Technical Assistance Grant Reporting Requirements**

Recipients of Technical Assistance Grants must submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

**C. Scholarship Recipients**

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (e.g., by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program), and a lodging receipt.

Scholarship Payment Vouchers should be submitted within 90 days after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

**IX. Financial Requirements****A. Purpose**

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

3. Generating financial data to be used in planning, managing, and controlling projects; and

4. Facilitating an effective audit of funded programs and projects.

**B. References**

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained on the OMB Web site at <http://www.whitehouse.gov/omb>.)

1. *Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions.*

2. *Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments.*

3. *Office of Management and Budget (OMB) Circular A-88, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.*

4. *Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.*

5. *Office of Management and Budget (OMB) Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.*

6. *Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-profit Organizations.*

7. *Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments.*

8. *Office of Management and Budget (OMB) Circular A-133, Audits of Institutions of Higher Education and Other Non-profit Institutions.*

### *C. Supervision and Monitoring Responsibilities*

#### 1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

#### 2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. (See section III.F.)

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The State Supreme Court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (see section VIII.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set

forth by the Institute (see sections K. below and VIII.A.3.)

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

#### *D. Accounting System*

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

#### *E. Total Cost Budgeting and Accounting*

Accounting for all funds awarded by the Institute must be structured and executed on a total project cost basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

##### 1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of

the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

##### 2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section IX.C.2. above.)

#### *F. Maintenance and Retention of Records*

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

##### 1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are

employed full-time or part-time. Time and effort reports are required for consultants.

## 2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

## 3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage.

When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

## 4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

### G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute. (See section IX.H.2. below.) The policies governing the disposition of the various types of project-related income are listed below.

### 1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

### 2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

### 3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior

written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

## 4. Income from the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VIII.A.11.b.

## 5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

### H. Payments and Financial Reporting Requirements

#### 1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "check-issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation Grants.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation grants should treat each grant as a new project and number the requests accordingly (i.e., on a grant rather than a project basis). For example, the first request for payment from a continuation grant would be number 1, the second number 2, etc.

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project

goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

## 2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Two copies of the Financial Status Report are required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation Grants.* Grantees receiving continuation grants should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant award should be number 1, the second number 2, etc.

### 3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

#### I. Allowability of Costs

##### 1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in OMB Circulars A-21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; A-87, Cost Principles for State and Local Governments; and A-122, Cost Principles for Non-profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at <http://www.whitehouse.gov/omb>.

##### 2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds \$10,000 or software to be purchased exceeds \$3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds \$300 a day. Institute funds may not be used to pay a consultant more than \$900 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval. See section X.A.1.

##### 3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to

attend an annual or other regular meeting of that organization.

##### 4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs (salaries plus fringe benefits). Grantees may apply unrecoverable indirect costs to meet their required matching contributions, including the required level of cash match. See sections III.L. and VI.A.4.d.(11).

a. *Approved Plan Available.* (1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

### J. Procurement and Property Management Standards

#### 1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of OMB Circular A-102. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of OMB Circular A-110.

#### 2. Property Management Standards

The property management standards as prescribed in Attachment N of OMB Circulars A-102 and A-110 apply to all Institute grantees and subgrantees except as provided in section VIII.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

### K. Audit Requirements

#### 1. Implementation

Each recipient of a Project or Continuation Grant must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and OMB Circular A-128, or OMB Circular A-133, will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

#### 2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up; maintaining a record of the actions

taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

### 3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a subsequent grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

#### *L. Close-Out of Grants*

##### 1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see section IX.L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

*a. Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

*b. Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply to the conclusion of every grant other than a scholarship, even when the project will continue under a Continuation Grant.

##### 2. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

### **X. Grant Adjustments**

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

#### *A. Grant Adjustments Requiring Prior Written Approval*

The following grant adjustments require the prior written approval of the Institute:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget. See section IX.I.2.d.

For Continuation Grants, funds from the original award may be used during the new grant period and funds awarded through a continuation grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VIII.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section IX.I.2.a.).

13. The purchase of automated data processing equipment and software (see section IX.I.2.b.).

14. Consultant rates (see section IX.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

#### *B. Requests for Grant Adjustments*

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

#### *C. Notification of Approval/Disapproval*

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his or her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

#### *D. Changes in the Scope of the Grant*

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

#### *E. Date Changes*

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section IX.L.2.).

*F. Temporary Absence of the Project Director*

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

*G. Withdrawal of/Change in Project Director*

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

*H. Transferring or Contracting Out of Grant-Supported Activities*

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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**David I. Tevelin,**  
*Executive Director.*

**Appendix A—SJI Libraries: Designated Sites and Contacts***Alabama*

Supreme Court Library

Mr. Timothy A. Lewis, State Law Librarian, Alabama Supreme Court Bldg., 300 Dexter Avenue, Montgomery, AL 36104, (334) 242-4347.

*Alaska*

Anchorage Law Library

Ms. Cynthia S. Fellows, State Law Librarian, Alaska Court Libraries, 820 W. Fourth Ave., Anchorage, AK 99501, (907) 264-0583.

*Arizona*

Supreme Court Library

Ms. Lani Orosco, Arizona Supreme Court, Supreme Court Library, 1501 W. Washington, Suite 445, Phoenix, AZ 85007, (602) 542-5028, e-mail: [lorosco@supreme.sp.state.az.us](mailto:lorosco@supreme.sp.state.az.us).

*Arkansas*

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, Little Rock, AR 72201, (501) 682-9400.

*California*

Administrative Office of the Courts

Mr. William C. Vickrey, Administrative Director of the Courts, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94107, (415) 865-4200.

*Colorado*

Supreme Court Library

Ms. Linda Gruenthal, Deputy Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, CO 80203, (303) 864-4522.

*Connecticut*

State Library

Ms. Denise D. Jernigan, State Librarian, Connecticut State Library, 231 Capital Avenue, Hartford, CT 06106, (860) 566-2516.

*Delaware*

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 577-8481.

*District of Columbia*

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks, Executive Officer, District of Columbia Courts, 500 Indiana Avenue, N.W., Suite 1500, Washington, D.C. 20001, (202) 879-1700.

*Florida*

Administrative Office of the Courts

Ms. Elisabeth H. Goodner, State Courts Administrator, Florida Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1900, (850) 922-5081, e-mail: [osca@flcourts.org](mailto:osca@flcourts.org).

*Georgia*

Administrative Office of the Courts

Mr. David Ratley, Director, Administrative Office of the Courts, 47 Trinity Avenue, Suite 414, Atlanta, GA 30334, (404) 656-5171.

*Hawaii*

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, 417 South King St., Room 119, Honolulu, HI 96813, (808) 539-4965.

*Idaho*

AOC Judicial Education Library/State Law Library

Ms. Beth Peterson, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334-3316.

*Illinois*

Supreme Court Library

Ms. Brenda Larison, Supreme Court of Illinois Library, 200 East Capitol Avenue, Springfield, IL 62701-1791, (217) 782-2425.

*Indiana*

Supreme Court Library

Mr. Dennis Lager, Supreme Court Librarian, Supreme Court Library, State House, Room 316, Indianapolis, IN 46204, (317) 232-2557.

*Iowa*

Administrative Office of the Court

Dr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Office of the State Court Administrator, State Capital Building, Des Moines, IA 50319-0001, (515) 281-8279.

*Kansas*

## Supreme Court Library

Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, KS 66612, (913) 296-3257.

*Kentucky*

## State Law Library

Ms. Marge Jones, State Law Librarian, State Law Library, State Capital, Room 200-A, Frankfort, KY 40601, (502) 564-4848.

*Louisiana*

## State Law Library

Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, LA 70112, (504) 568-5705.

*Maine*

## State Law and Legislative Reference Library

Ms. Lynn E. Randall, State Law Librarian, 43 State House Station, Augusta, ME 04333, (207) 287-1600.

*Maryland*

## State Law Library

Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, MD 21401, (410) 260-1430.

*Massachusetts*

## Middlesex Law Library

Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494-4148.

*Michigan*

## Michigan Judicial Institute

Dawn F. McCarty, Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, MI 48909, (517) 334-7805.

*Minnesota*

## State Law Library (Minnesota Judicial Center)

Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (612) 297-2084.

*Mississippi*

## Mississippi Judicial College

Mr. Leslie Johnson, Director, University of Mississippi, P.O. Box 8850, University, MS 38677, (601) 232-5955.

*Montana*

## State Law Library

Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, 215 North Sanders, Helena, MT 59620, (406) 444-3660.

*Nebraska*

## Administrative Office of the Courts

Mr. Frank E. Goodroe, State Court Administrator, Administrative Office of the Courts/Probation, State Capitol Building, Room 1220, Post Office Box 98910, Lincoln, NE 68509-8910, (402) 471-2755.

*Nevada*

## National Judicial College

Mr. Randall Snyder, Law Librarian, National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89550, (775) 784-6747.

*New Hampshire*

## New Hampshire Law Library

Ms. Christine Swan, Law Librarian, New Hampshire Law Library, Supreme Court Building, One Noble Drive, Concord, NH 03301-6160, (603) 271-3777.

*New Jersey*

## New Jersey State Library

Ms. Marjorie Garwig, Supervising Law Librarian, New Jersey State Law Library, 185 West State Street, P.O. Box 520, Trenton, NJ 08625-0250, (609) 292-6230.

*New Mexico*

## Supreme Court Library

Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, NM 87504, (505) 827-4850.

*New York*

## Supreme Court Library

Ms. Barbara Briggs, Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, 401 Montgomery Street, Syracuse, NY 13202, (315) 435-2063.

*North Carolina*

## Supreme Court Library

Mr. Thomas P. Davis, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, 2 East Morgan Street, Raleigh, NC 27601, (919) 733-3425.

*North Dakota*

## Supreme Court Library

Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, Dept. 182, 2nd Floor, Judicial Wing, Bismarck, ND 58505-0540, (701) 328-2229.

*Northern Mariana Islands*

## Supreme Court of the Northern Mariana Islands

Honorable Miguel Sablan Demapan, Chief Justice, Supreme Court of the Commonwealth of the Northern Mariana Islands, P.O. Box 2165 CK, Saipan, MP 96950, (670) 236-9700.

*Ohio*

## Supreme Court Library

Mr. Ken Kozlowski, Director, Law Library, Supreme Court of Ohio, 65 South Front Street, 11th Floor, Columbus, OH 43215-3431, (614) 387-9666.

*Oklahoma*

## Administrative Office of the Courts

Mr. Howard W. Conyers, Administrative Director of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521-2450.

*Oregon*

## Administrative Office of the Courts

Ms. Kingsley W. Click, State Court Administrator, Office of the State Court Administrator, Supreme Court Building, Salem, OR 97310, (503) 986-5900.

*Pennsylvania*

## State Library of Pennsylvania

Ms. Barbara Miller, Collection Management Librarian, State Library of Pennsylvania, Office of Commonwealth Libraries, Bureau of State Library — Collection Management, 333 Market Street, Harrisburg, PA 17126-1745, (717) 787-5718, [barbmiller@state.pa.us](mailto:barbmiller@state.pa.us).

*Puerto Rico*

## Office of Court Administration

Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, PR 00919.

*Rhode Island*

## Roger Williams University

Ms. Gail Winson, Director of the Library, Roger Williams University, School of Law Library, 10 Metacom Avenue, Bristol, RI 02809,

*South Carolina*

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Steve Hinckley, Library Director, Coleman Karesh Law Library, U. S. C. Law Center, University of South Carolina, Columbia, SC 29208, (803) 777-5944.

*South Dakota*

## State Law Library

Librarian, 500 East Capitol, Pierre, South Dakota 57501, (605) 773-4898.

*Tennessee*

## Tennessee State Law Library

Honorable Cornelia A. Clark, Director, Administrative Office of the Courts, Tennessee Supreme Court, 511 Union, Nashville, TN 37243-0607, (615) 741-2687.

*Texas*

## State Law Library

Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463-1722.

*U.S. Virgin Islands*

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804.

*Utah*

## Utah State Judicial Administration Library

Ms. Debbie Christiansen, Utah State Judicial Administration Library, Administrative Office of the Courts, 450 South State, P.O. Box 140241, Salt Lake City, UT 84114-0241, (801) 533-6371.

*Vermont*

Supreme Court of Vermont

Mr. Paul J. Donovan, Law Librarian,  
Department of Libraries, 109 State Street,  
Montpelier, VT 05609, (802) 828-3278.

*Virginia*

Administrative Office of the Courts

Mr. Robert N. Baldwin, State Court  
Administrator, Supreme Court of Virginia,  
100 North Ninth Street, 3rd Floor,  
Richmond, VA 23219, (804) 786-6455.

*Washington*

Washington State Law Library

Ms. Deborah Norwood, State Law Librarian,  
Washington State Law Library, Temple of  
Justice, P.O. Box 40751, Olympia, WA  
98504-0751, (360) 357-2136.

*West Virginia*

Administrative Office of the Courts

Ms. Kathleen Gross, Deputy Director of  
Judicial Education, West Virginia Supreme  
Court of Appeals State Capitol, 1900  
Kanawha Boulevard East, Building 1,  
Room E-100, Charleston, WV 25305, (304)  
558-0145.

*Wisconsin*

State Law Library

Ms. Jane Colwin, Director of Public Services,  
State Law Library, 310 E. State Capitol,  
P.O. Box 7881, Madison, WI 53707, (608)  
261-2340.

*Wyoming*

Wyoming State Law Library

Ms. Kathleen B. Carlson, Law Librarian,  
Wyoming State Law Library, Supreme  
Court Building, 2301 Capitol Avenue,  
Cheyenne, WY 82002, (307) 777-7509.

*National*

American Judicature Society

Mr. John Edwards, Opperman Hall, Drake  
University Law School, 2507 University  
Avenue, Des Moines, IA 50311-4504, (515)  
271-2141,  
e-mail: [John.Edwards@drake.edu](mailto:John.Edwards@drake.edu)

National Center for State Courts

Ms. Peggy Rogers, Acquisitions/Serials  
Librarian, 300 Newport Avenue,  
Williamsburg, VA 23187-8798, (757) 259-  
1857.

*JERITT*

Dr. Maureen E. Conner, Executive Director,  
The JERITT Project, 1407 S. Harrison, Suite  
330 Nisbet, East Lansing, MI 48823-5239,  
(517) 353-8603, (517) 432-3965 (fax), e-  
mail: [connerm@msu.edu](mailto:connerm@msu.edu), website: <http://jeritt.msu.edu>.

## Appendix B—Illustrative List of Technical Assistance Grants

The following list presents examples of the types of technical assistance for which State and local courts can request Institute funding. Please check with the JERITT project (<http://jeritt.msu.org> or 517/353-8603) for more information about these and other SJI-supported technical assistance projects.

*Application of Technology*

Technology Plan (Office of the South Dakota  
State Court Administrator: SJI-99-066)

*Children and Families in Court*

Expanded Unified Family Court (Ventura  
County, CA, Superior Court: SJI-01-122)  
Trial Court Performance Standards for the  
Unified Family Court of Delaware (Family  
Court of Delaware: SJI-98-205)

*Court Planning, Management, and Financing*

Job Classification and Pay Study of the New  
Hampshire Courts (New Hampshire  
Administrative Office of the Courts: SJI-  
98-011)  
A Model for Building and Institutionalizing  
Judicial Branch Strategic Planning (12th  
Judicial Circuit, Sarasota, FL: SJI-98-266)  
Strategic Planning (Fourth Judicial District  
Court, Hennepin County, MN: SJI-99-221)  
Differentiated Case Management for the  
Improvement of Civil Case Processing in  
the Trial Courts of Texas (Texas Office of  
Court Administration: SJI-99-222)

*Dispute Resolution and the Courts*

Evaluating the New Mexico Court of Appeals  
Mediation Program (New Mexico Supreme  
Court: SJI-00-122)

*Improving Public Confidence in the Courts*

Mississippi Task Force on Gender Fairness in  
the Courts (Mississippi Administrative  
Office of the Courts: SJI-00-108)  
Analysis of the Juror Debriefing Project (King  
County, WA, Superior Court: SJI-00-049)

*Improving the Court's Response to Family Violence*

New Hampshire Fatality Reviews (New  
Hampshire Administrative Office of the  
Courts: SJI-99-142)

*Education and Training for Judges and Other Court Personnel*

Iowa Supreme Court Advisory Committee on  
Judicial Branch Education (Iowa State  
Court Administrator's Office: SJI-01-200)

## Appendix C—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Judicial Branch Education Technical Assistance Grant. *Please refer to section VI.C. for information on submitting a letter application for a Judicial Branch Education Technical Assistance Grant.* A list of all SJI-supported education projects is available on the SJI web site (<http://www.statejustice.org>). Please also check with the JERITT project (<http://jeritt.msu.edu> or 517/353-8603) and your State SJI-designated library (see Appendix A) for more information about these and other SJI-supported curricula that may be appropriate for in-State adaptation.

*Alternative Dispute Resolution*

Judicial Settlement Manual (National Judicial  
College: SJI-89-089)

Improving the Quality of Dispute Resolution  
(Ohio State University College of Law: SJI-  
93-277)

Comprehensive ADR Curriculum for Judges  
(American Bar Association: SJI-95-002)  
Domestic Violence and Custody Mediation  
(American Bar Association: SJI-96-038)

*Court Coordination*

Bankruptcy Issues for State Trial Court  
Judges (American Bankruptcy Institute:  
SJI-91-027)  
Intermediate Sanctions Handbook:  
Experiences and Tools for Policymakers  
(Center for Effective Public Policy: IAA-  
88-NIC-001)  
Regional Conference Cookbook: A Practical  
Guide to Planning and Presenting a  
Regional Conference on State-Federal  
Judicial Relationships (U.S. Court of  
Appeals for the 9th Circuit: SJI-92-087)  
Bankruptcy Issues and Domestic Relations  
Cases (American Bankruptcy Institute: SJI-  
96-175)

*Court Management*

Managing Trials Effectively: A Program for  
State Trial Judges (National Center for State  
Courts/National Judicial College: SJI-87-  
066/067, SJI-89-054/055, SJI-91-025/026)  
Caseflow Management Principles and  
Practices (Institute for Court Management/  
National Center for State Courts: SJI-87-  
056)  
A Manual for Workshops on Processing  
Felony Dispositions in Limited Jurisdiction  
Courts (National Center for State Courts:  
SJI-90-052)  
Managerial Budgeting in the Courts;  
Performance Appraisal in the Courts;  
Managing Change in the Courts; Court  
Automation Design; Case Management for  
Trial Judges; Trial Court Performance  
Standards (Institute for Court Management/  
National Center for State Courts: SJI-91-  
043)  
Strengthening Rural Courts of Limited  
Jurisdiction and Team Training for Judges  
and Clerks (Rural Justice Center: SJI-90-  
014, SJI-91-082)  
Integrating Trial Management and Caseflow  
Management (Justice Management  
Institute: SJI-93-214)  
Leading Organizational Change (California  
Administrative Office of the Courts: SJI-  
94-068)  
Managing Mass Tort Cases (National Judicial  
College: SJI-94-141)  
Employment Responsibilities of State Court  
Judges (National Judicial College: SJI-95-  
025)  
Caseflow Management; Resources, Budget,  
and Finance; Visioning and Strategic  
Planning; Leadership; Purposes and  
Responsibilities of Courts; Information  
Management Technology; Human  
Resources Management; Education,  
Training, and Development; Public  
Information and the Media from "NACM  
Core Competency Curriculum Guidelines"  
(National Association for Court  
Management: SJI-96-148)  
Dealing with the Common Law Courts: A  
Model Curriculum for Judges and Court  
Staff (Institute for Court Management/  
National Center for State Courts: SJI-96-  
159)

Caseflow Management from "Innovative Educational Programs for Judges and Court Managers" (Justice Management Institute: SJI-98-041)

#### *Courts and Communities*

Reporting on the Courts and the Law (American Judicature Society: SJI-88-014)

Victim Rights and the Judiciary: A Training and Implementation Project (National Organization for Victim Assistance: SJI-89-083)

National Guardianship Monitoring Project: Trainer and Trainee's Manual (American Association of Retired Persons: SJI-91-013)

Access to Justice: The Impartial Jury and the Justice System and When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide (National Judicial College: SJI-91-054)

You Are the Court System: A Focus on Customer Service (Alaska Court System: SJI-94-048)

Serving the Public: A Curriculum for Court Employees (American Judicature Society: SJI-96-040)

Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide Conference (California Administrative Office of the Courts: SJI-98-008)

Charting the Course of Public Trust and Confidence in Our Courts (Mid-Atlantic Association for Court Management: SJI-98-208)

Trial Court Judicial Leadership Program: Judges and Court Administrators Serving the Courts and Community (National Center for State Courts: SJI-98-268)

Public Trust and Confidence (Arizona Courts Association: SJI-99-063)

#### *Diversity, Values, and Attitudes*

Troubled Families, Troubled Judges (Brandeis University: SJI-89-071)

The Crucial Nature of Attitudes and Values in Judicial Education (National Council of Juvenile and Family Court Judges: SJI-90-058)

Enhancing Diversity in the Court and Community (Institute for Court Management/National Center for State Courts: SJI-91-043)

Cultural Diversity Awareness in Nebraska Courts from Native American Alternatives to Incarceration Project (Nebraska Urban Indian Health Coalition: SJI-93-028)

Race Fairness and Cultural Awareness Faculty Development Workshop (National Judicial College: SJI-93-063)

A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and The Ethics Fieldbook: Tool For Trainers (American Judicature Society: SJI-93-068)

Court Interpreter Training Course for Spanish Interpreters (International Institute of Buffalo: SJI-93-075)

Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel (Brandeis University: SJI-94-019)

Multi-Cultural Training for Judges and Court Personnel (St. Petersburg Junior College: SJI-95-006)

Ethical Standards for Judicial Settlement: Developing a Judicial Education Module (American Judicature Society: SJI-95-082)

Code of Ethics for the Court Employees of California (California Administrative Office of the Courts: SJI 95-245)

Workplace Sexual Harassment Awareness and Prevention (California Administrative Office of the Courts: SJI 96-089)

Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts (Virginia Supreme Court: SJI-96-150)

When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts (National Judicial Education Program: SJI 96-161)

When Judges Speak Up: Ethics, the Public, and the Media (American Judicature Society: SJI-96-152)

#### *Family Violence and Gender-Related Violent Crime*

National Judicial Response to Domestic Violence: Civil and Criminal Curricula (Family Violence Prevention Fund: SJI-87-061, SJI-89-070, SJI-91-055).

Domestic Violence: A Curriculum for Rural Courts (Rural Justice Center: SJI-88-081)

Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation (Women Judges' Fund for Justice: SJI-89-062)

Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault (National Judicial Education Program: SJI-92-003, SJI-98-133 [video curriculum])

Domestic Violence & Children: Resolving Custody and Visitation Disputes (Family Violence Prevention Fund: SJI-93-255)

Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute (National Judicial Education Program: SJI 95-019)

Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff (American Bar Association: SJI-93-274)

#### *Health and Science*

A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum (University of Nevada, Reno: SJI-97-030)

#### *Judicial Education for Appellate Court Judges*

Career Writing Program for Appellate Judges (American Academy of Judicial Education: SJI-88-086)

Civil and Criminal Procedural Innovations for Appellate Courts (National Center for State Courts: SJI-94-002)

#### *Judicial Branch Education: Faculty and Program Development*

The Leadership Institute in Judicial Education and The Advanced Leadership Institute in Judicial Education (University of Memphis: SJI-91-021)

"Faculty Development Instructional Program" from Curriculum Review (National Judicial College: SJI-91-039)

Resource Manual and Training for Judicial Education Mentors (National Association of State Judicial Educators: SJI-95-233)

Institute for Faculty Excellence in Judicial Education (National Council of Juvenile and Family Court Judges: SJI-96-042; University of Memphis: SJI-01-202)

#### *Orientation, Mentoring, and Continuing Professional Education of Judges and Court Personnel*

Legal Institute for Special and Limited Jurisdiction Judges (National Judicial College: SJI-89-043, SJI-91-040)

Pre-Bench Training for New Judges (American Judicature Society: SJI-90-028)

A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts (Arizona Supreme Court: SJI-90-078)

Court Organization and Structure (Institute for Court Management/National Center for State Courts: SJI-91-043)

New Employee Orientation Facilitators Guide (Minnesota Supreme Court: SJI-92-155)

Magistrates Correspondence Course (Alaska Court System: SJI-92-156)

Bench Trial Skills and Demeanor: An Interactive Manual (National Judicial College: SJI 94-058)

Ethical Issues in the Election of Judges (National Judicial College: SJI-94-142)

Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; Purposes and Responsibilities of Courts; Information Management Technology; Human Resources Management; Education, Training, and Development; Public Information and the Media from "NACM Core Competency Curriculum Guidelines" (National Association for Court Management: SJI-96-148)

Innovative Approaches to Improving Competencies of General Jurisdiction Judges (National Judicial College: SJI-98-001)

Caseflow Management from "Innovative Educational Programs for Judges and Court Managers" (Justice Management Institute: SJI-98-041)

#### *Juveniles and Families in Court*

Fundamental Skills Training Curriculum for Juvenile Probation Officers (National Council of Juvenile and Family Court Judges: SJI-90-017)

Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum (ABA Center on Children and the Law: SJI 94-321)

Juvenile Justice at the Crossroads: Literature-Based Seminars for Judges, Court Personnel, and Community Leaders (Brandeis University: SJI-99-150)

#### *Strategic and Futures Planning*

Minding the Courts into the Twentieth Century (Michigan Judicial Institute: SJI-89-029)

An Approach to Long-Range Strategic Planning in the Courts (Center for Public Policy Studies: SJI-91-045)

*Substance Abuse*

Good Times, Bad Times: Drugs, Youth, and  
the Judiciary (Professional Development  
and Training Center, Inc.: SJI-91-095)

Gaining Momentum: A Model Curriculum for  
Drug Courts (Florida Office of the State  
Courts Administrator: SJI-94-291)  
Judicial Response to Substance Abuse:  
Children, Adolescents, and Families

(National Council of Juvenile and Family  
Court Judges: SJI-95-030)  
Judicial Education on Substance Abuse  
(American Judges Association and National  
Center for State Courts: SJI-01-210)

**BILLING CODE 6820-SC-P**

## Appendix D

# STATE JUSTICE INSTITUTE APPLICATION

<b>1. APPLICANT</b> a. Applicant Name _____ b. Organizational Unit _____ c. Street/P.O. Box _____ d. City _____ e. State _____ f. Zip Code _____ g. Phone Number _____ h. Fax Number _____ i. Web Site Address _____ j. Name & Phone Number of Contact Person _____ k. Title _____ l. E-Mail Address _____	<b>2. TYPE OF APPLICANT</b> <i>(Circle appropriate letter)</i> a. State court b. National organization operating in conjunction with State court c. National State court support organization d. College or university e. Other non-profit organization or agency f. Individual g. Corporation or partnership h. Other unit of government i. Other _____ <i>(specify)</i>
<b>3. PROPOSED START DATE</b> _____	
<b>4. PROJECT DURATION</b> (Months) _____	
<b>5. EMPLOYER IDENTIFICATION #</b> _____	<b>6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:</b> Source _____ Date Submitted _____ Amount Sought _____ Disposition (if any) or Current Status _____
<b>7. ENTITY TO RECEIVE FUNDS</b> <i>(if different from above)</i> a. Organizational Name _____ b. Organizational Unit _____ c. Street/P.O. Box _____ d. City _____ e. State _____ f. Zip Code _____ g. Phone Number _____ h. Fax Number _____ i. Web Site Address _____ j. Name & Phone Number of Contact Person _____ k. Title _____ l. E-Mail Address _____	<b>8. a. AMOUNT REQUESTED FROM SJI</b> \$ _____ <b>b. AMOUNT OF MATCH</b> Cash match \$ _____ Non-cash match \$ _____ <b>c. TOTAL MATCH</b> \$ _____ <b>d. TOTAL PROJECT COST</b> \$ _____
<b>9. TITLE OF PROPOSED PROJECT</b> _____	
<b>10. CONGRESSIONAL DISTRICT OF:</b> _____ <div style="display: flex; justify-content: space-between; font-size: small;"> <span>Name of Representative; District Number</span> <span>Project (if different than applicant): Name of Representative; District Number</span> </div>	
<b>11. CERTIFICATION</b> <p>On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on behalf of the applicant.</p>	
<div style="display: flex; justify-content: space-between; font-size: x-small;"> <span>SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT</span> <span>TITLE</span> <span>DATE</span> </div> <p style="font-size: x-small;">(For applications from State and local courts, Form B, Certificate of State Approval, must be attached.)</p>	
<b>FOR INSTITUTE USE ONLY</b>	
<b>12. a. APPLICATION NUMBER</b> _____ <b>b. CONCEPT PAPER NUMBER</b> _____ <b>c. GRANT NUMBER</b> _____	<b>13. DATE RECEIVED</b> _____
<b>14. DATE OF ACTION</b> _____	

# STATE JUSTICE INSTITUTE

## INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-1 **Legal name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; **complete address** of applicant, including phone and fax numbers and web site address; and **name, phone number, title, and e-mail address of a contact person** who can provide further information about this application.

2. a **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

2. b **National organizations operating in conjunction with State court** include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.

2. c **National state court organizations** include national non-profit organizations with the primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.

2. d **College or university** includes all institutions of higher education.

2. e **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

2. f **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

2. g **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

2. h **Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. **The proposed start date** of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award.

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. **Employer Identification #** as assigned by the Internal Revenue Service.
6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of the submission, the **amount** of funding sought, and the **disposition** (if any).
7. a-1 **The entity to receive funds** is the court or organization that will receive, administer, and account for any monies awarded. If the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its agency or council designated in accordance with 42 U.S.C. 10705(b) (4). **Applicants should complete this block only if the entity that will receive the funds is different from the applicant.**
8. a Insert the **amount requested** from the State Justice Institute to conduct the project.
8. b The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, a Federal agency, or private sources. See 42 U.S.C. 10705 (d).

**Cash match** refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

**Non-cash match** refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project.
8. c **Total match** refers to the sum of the cash and in-kind contributions to the project.
8. d **Total project cost** represents the sum of the amount requested from the Institute and all match contributions to the project.
9. The **title of the proposed project** should reflect the objectives of the activities to be conducted.
10. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district**, along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.
11. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

(Form B)

**STATE JUSTICE INSTITUTE****Certificate of State Approval**

The \_\_\_\_\_  
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled \_\_\_\_\_

prepared by \_\_\_\_\_  
Name of Applicant

approves its submission to the State Justice Institute, and

☐ agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

☐ designates \_\_\_\_\_  
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## **INSTRUCTIONS - FORM B**

The State Justice Institute Act requires that:

Each Application for funding by a state or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b) (4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

# STATE JUSTICE INSTITUTE

## PROJECT BUDGET

(TABULAR FORMAT)

Applicant: \_\_\_\_\_

Project Title \_\_\_\_\_

For Project Activity from \_\_\_\_\_ to \_\_\_\_\_

Total Amount Requested for Project from SJI \$ \_\_\_\_\_

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							
Fringe Benefits							
Consultant / Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing / Photocopying							
Audit							
Other (specify)							
Direct Costs							
Indirect Costs							
Total							

Remarks:



### Application Budget Instructions

Applicants may submit the proposed project budget in either the tabular format of Form C or a spreadsheet format similar to Form C1. Applicants requesting more than \$100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding 12-month period or portion thereof beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section VI.A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

**COLUMN HEADINGS:** For Budget Form C1, the columns should be labeled consecutively by task, e.g., TASK #1, TASK #2, etc. At the end of each 12-month period or portion thereof beyond month 12, the following 4 columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

## STATE JUSTICE INSTITUTE ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.
2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.
3. In accordance with 42 U.S.C. 10706(a) and 10707(c):
  - a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;
  - b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,
  - c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.
4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.
5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.
6. It will provide for an annual fiscal audit of the project.
7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.
8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.
10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must be properly identified, whether the material is in a verbatim or extensive paraphrase format.
11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.
12. The following statement will be prominently displayed on all products prepared as a result of the project:  
This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.
13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.
14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.
15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.
16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of \$1,000 or more shall vest in the Institute, which will direct the disposition of the property.
17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

## DISCLOSURE OF LOBBYING ACTIVITIES

*The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.*

*Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.*

Name of Applicant: \_\_\_\_\_

Title of Application: \_\_\_\_\_

☐ Yes ☐ No

Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?

### SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered YES above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

### STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

Signature \_\_\_\_\_

Name (Typed) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Appendix E**

(Form E)

**STATE JUSTICE INSTITUTE****LINE-ITEM BUDGET FORM**

For Judicial Branch Education Technical Assistance and  
Technical Assistance Grant Requests\*

<b><u>Category</u></b>	<b><u>SJI Funds</u></b>	<b><u>Cash Match</u></b>	<b><u>In-Kind Match</u></b>
Personnel	\$ _____	\$ _____	\$ _____
Fringe Benefits	\$ _____	\$ _____	\$ _____
Consultant/Contractual	\$ _____	\$ _____	\$ _____
Travel	\$ _____	\$ _____	\$ _____
Equipment	\$ _____	\$ _____	\$ _____
Supplies	\$ _____	\$ _____	\$ _____
Telephone	\$ _____	\$ _____	\$ _____
Postage	\$ _____	\$ _____	\$ _____
Printing/Photocopying	\$ _____	\$ _____	\$ _____
Audit	\$ _____	\$ _____	\$ _____
Other	\$ _____	\$ _____	\$ _____
Indirect Costs (%)	\$ _____	\$ _____	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>

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**PROJECT TOTAL**                      \$ \_\_\_\_\_

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Financial assistance has been or will be sought for this project from the following other sources:

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\* Judicial Branch Education Technical Assistance Grant requests and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

## Appendix F

**SJI** Scholarship Application

*This application does not serve as a registration for the course. Please contact the education provider.*

**APPLICANT INFORMATION:**

1. Applicant Name: \_\_\_\_\_  
(Last) (First) (MI)
2. Position: \_\_\_\_\_
3. Name of Court: \_\_\_\_\_
4. Address: \_\_\_\_\_  
Street/P.O. Box  
City State Zip Code
5. Telephone No. \_\_\_\_\_
6. Congressional District: \_\_\_\_\_

**PROGRAM INFORMATION:**

7. Course Name: \_\_\_\_\_
8. Course Dates: \_\_\_\_\_
9. Course Provider: \_\_\_\_\_
10. Location Offered: \_\_\_\_\_

**ESTIMATED EXPENSES:**

*(Please note: Scholarships are limited to tuition, reasonable lodging up to \$150 per night (including taxes), and transportation expenses to and from the site of the course up to a maximum of \$1,500.)*

Tuition: \$ \_\_\_\_\_ Transportation: \$ \_\_\_\_\_  
(Airfare, train fare, or if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Lodging: \$ \_\_\_\_\_ Total Amount Requested: \$ \_\_\_\_\_

Are you seeking/have you received a scholarship for this course from another source?

☐ Yes ☐ No If so, please specify the source(s) and amounts(s) \_\_\_\_\_  
\_\_\_\_\_

**SJI SCHOLARSHIP APPLICATION****PAGE 2****ADDITIONAL INFORMATION:**

*Please attach a current resume or professional summary, and provide the information requested below.  
(You may attach additional pages if necessary.)*

1. Please describe your need to acquire the skills and knowledge taught in this course.
  
  
  
  
  
  
  
  
  
  
2. Please describe how will taking this course benefit you, your court, and the State's courts generally.
  
  
  
  
  
  
  
  
  
  
3. Is there an educational program currently available through your State on this topic?
  
  
  
  
  
  
  
  
  
  
4. Are State or local funds available to support your attendance at the proposed course?  
If so, what amount(s) will be provided?
  
  
  
  
  
  
  
  
  
  
5. How long have you served as a judge or court manager? \_\_\_\_\_
6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?  
☐ 0-1 year    ☐ 2-4 years    ☐ 5-7 years    ☐ 8-10 years    ☐ 11+ years
7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

**STATEMENT OF APPLICANT'S COMMITMENT**

**If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.**

\_\_\_\_\_  
Signature\_\_\_\_\_  
Date

*Please return this form and Form S-2 to:*

Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

**SJI** Scholarship Application

## Concurrence

I, \_\_\_\_\_,  
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

\_\_\_\_\_

prepared by \_\_\_\_\_,  
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Form S2 (9/98)



# Federal Register

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**Thursday,  
October 14, 2004**

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## **Part III**

## **Department of Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 95**

**Redesignation of Mountainous Areas in  
Alaska; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 95**

[Docket No.: FAA-2004-19352]

RIN 2120-A144

**Redesignation of Mountainous Areas in Alaska****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposal would update the designated mountainous areas in the State of Alaska. Regulations currently designating mountainous areas in Alaska were established in 1956. Since that time, we have concluded that areas previously considered non-mountainous should be expanded, and two areas previously designated mountainous should now be considered non-mountainous. The intended effect of this proposal is to enhance safety by allowing aircraft operating in certain non-mountainous areas to fly at lower altitudes when necessary.

**DATES:** Comments must be received on or before November 15, 2004.

**ADDRESSES:** You may send comments [identified by Docket Number FAA-2004-19352] using any of the following methods:

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.
- *Fax:* 1-202-493-2251.
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* To read background documents or comments received, go to

<http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Girard, Flight Standards Division, Technical Standards Branch, AAL-233, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-3578.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The FAA invites interested persons to participate in this proposal by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposal in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposal. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

*Privacy Act:* Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this rule, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will

stamp the date on the postcard and mail it to you.

**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- (3) Accessing the Government Printing Office's Web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

**Background**

Today, FAA regulations designate a large majority of the State of Alaska as a mountainous area. This designation sets specific minimum altitudes for all aircraft traveling in the area. Five areas of the state are specifically excepted from the mountainous area designation, and aircraft operated in these areas do not need to meet the same minimum altitude requirements. This proposal would expand those five areas that are excepted in the regulations, and add two areas in the vicinity of Fort Yukon and the islands of St. Paul and St. George (also known as the Pribilof Islands) under the exception.

The FAA has designated certain areas within the United States as mountainous areas. These areas are regulated to make sure that pilots maintain certain altitude minimums for a safe flying environment. These designated mountainous areas are specified in 14 CFR part 95, Subpart B. They include areas in the Eastern and Western continental United States, Hawaii, Puerto Rico, and Alaska.

Designating an area as a mountainous area involves the consideration of:

1. Weather phenomena in the area that are conducive to marked pressure differentials;
2. Bernoulli effect;
3. Precipitous terrain turbulence; and
4. Other factors likely to increase the possibility of altimeter error.

Specifically, § 91.177(a)(2)(i) sets minimum altitude requirements for anyone operating an aircraft under Instrument Flight Rules (IFR) over an area designated as a mountainous area

in part 95 (where no minimum altitudes are prescribed for that area in parts 95 and 97). A pilot must maintain an altitude of at least 2,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown. Sections 91.515(a)(2) and 135.203(a)(2) provide similar requirements for Visual Flight Rule (VFR) night operations conducted under Subpart F of part 91 and part 135. Section 121.657(c) also provides the same requirement for night VFR, IFR, and over-the-top operations conducted under part 121. In each of the above sections the requirements are similar for non-mountainous areas except that the minimum altitude is set at 1,000 feet, rather than 2,000 feet.

In 1956, when the regulations designating mountainous areas were written, the FAA designated those areas that could be considered either mountainous or non-mountainous as mountainous areas because there were relatively few IFR operations. Since then, the number of IFR operations in the State has significantly increased. Technology and experience have provided the FAA with more accurate information on which areas within the state should receive exception status from the mountainous area designation. These areas meet the current defined requirements for non-mountainous areas, but were not previously identified. Today, IFR operations are prevalent in nearly every portion of the State. Correspondence with pilots operating in Alaska has supported the conclusion that IFR operations are common and that the new designation of mountainous areas is necessary to provide appropriate flexibility for pilots and controllers. Pilots have asserted that the minimum altitude required in designated mountainous areas can force aircraft to fly high enough in certain weather conditions to risk ice buildup on wings and control surfaces. Thus, the risk assessment that led to a mountainous/non-mountainous classification in the 1950's may no longer be appropriate. The FAA believes the existing regulations may expose pilots operating in some parts of Alaska currently classified as mountainous areas to a greater risk than necessary. Additionally, this proposal will enhance safety by improving traffic flow and reducing controller workload.

There are currently five areas outlined in the exceptions section of the regulation as non-mountainous areas. This proposed rule would expand these areas slightly while adding two more areas that would be designated non-mountainous.

Each of the proposed exception areas listed in this proposed rule is an area with homogenous weather characteristics. Weather reporting stations are now more abundant and reliable than when these regulations were written in 1956. These areas are free of precipitous terrain and weather phenomena associated with other designated mountainous areas. Because of these factors, we believe additional operational altitudes are necessary for these areas and these changes will not adversely affect safety.

For purposes of this proposed rule, a map is presented to illustrate the extent of these areas. The map entitled "Designated Mountainous Areas" of the State of Alaska that is currently included in part 95 will be replaced by the new map that includes the revisions and additions to § 95.17(b). See Docket No. FAA-2004-19352 to view the map.

#### **Economic Assessment, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment**

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to

that effect and the basis for that determination is included in the proposed regulation. Since this proposed rule more accurately identifies mountainous areas in Alaska, and thereby provides greater flexibility in aircraft operations, it is expected to have a minimal cost impact with positive net benefits. The FAA requests comments with supporting justification regarding the FAA determination of minimal impact.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule will affect only the areas in which a plane may fly at a certain altitude. The changes we are proposing should not change how small entities or individuals in Alaska conduct business operations. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

#### **Trade Impact Analysis**

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as

safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it will not create unnecessary obstacles to foreign commerce and that international standards were considered.

#### Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

#### Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to airspace designations specifically in Alaska, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for the proposed rule.

#### Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

#### Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### Section-by-Section Discussion of Proposal

##### 14 CFR Part 95, Subpart B

##### Section 95.17

In subsection (a) *Area*, we propose changing "The Territory of Alaska" to read "The State of Alaska." When the regulation was originally written in 1956, Alaska was not yet a State. In subsection (b) *Exceptions*, we propose revising the five current exceptions and adding two more for areas not previously covered.

The current exception areas that would be revised are:

(1) In the vicinity of Fairbanks, AK, and Nenana, AK. The proposed revision would include areas in the vicinity of Delta Junction, AK, and Minchumina, AK.

(2) In the vicinity of Talkeetna, AK, Anchorage, AK, Kenai, AK, and Homer, AK. The proposed revision would include additional shoreline and coastal areas west of the Cook Inlet.

(3) In the vicinity of King Salmon, AK, and Port Heiden, AK. The proposed revision would include areas in the vicinity of Dillingham, AK, and Iliamna, AK.

(4) In the vicinity of Bethel, AK, and Aniak, AK. The proposed revision would include areas in the vicinity of Anvik, AK, Saint Mary's, AK, Quinhagak, AK, Kipnuk, AK, Hooper Bay, AK, and Nunivak Island, AK.

(5) In the vicinity of Point Barrow, AK, Prudhoe Bay, AK, and Barter Island, AK. The proposed revision would include an area in the vicinity of Umiat, AK, and the coastal area east of Barter Island, AK.

The two additional exceptions that are being proposed include areas:

(1) In the vicinity of Fort Yukon, AK.  
(2) The islands of Saint Paul and Saint George, which are also collectively known as the Pribilof Islands.

#### List of Subjects in 14 CFR Part 95

Air traffic control, Airspace, Alaska, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 95 of the Federal Aviation Regulations (14 CFR Part 95) as follows:

#### PART 95—IFR ALTITUDES

1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Section 95.17 is revised to read as follows:

##### § 95.17 Alaska Mountainous Area.

All of the following area excluding those portions specified in the exceptions:

(a) *Area.* The State of Alaska.

(b) *Exceptions;*

(1) Fairbanks—Nenana Area.

Beginning at latitude 64°54' N, longitude 147°00' W; thence to latitude 64°50' N, longitude 151°22' W, thence to latitude 63°50' N, longitude 152°50' W; thence to latitude 63°30' N, longitude 152°30' W; thence to latitude 63°30' N, longitude 151°30' W; thence to latitude 64°05' N, longitude 150°30' W; thence to latitude 64°20' N, longitude 149°00' W; thence to latitude 64°07' N, longitude 146°30' W; thence to latitude 63°53' N, longitude 146°00' W; thence to latitude 63°53' N, longitude 145°00' W; thence to latitude 64°09' N, longitude 145°16' W; thence to latitude 64°12' N, longitude 146°00' W; thence to latitude 64°25' N, longitude 146°37' W; thence to latitude 64°54' N, longitude 147°00' W, point of beginning.

(2) Anchorage—Homer Area.

Beginning at latitude 61°50' N, longitude 151°12' W; thence to latitude 61°24' N, longitude 150°28' W; thence to latitude 61°08' N, longitude 151°47' W; thence to latitude 59°49' N, longitude 152°40' W; thence to latitude 59°25' N, longitude 153°10' W; thence to latitude 59°00' N, longitude 153°10' W; thence to latitude 59°33' N, longitude 151°28' W; thence to latitude 60°31' N, longitude 150°43' W; thence to latitude 61°13' N, longitude 149°39' W; thence to latitude 61°37' N, longitude 149°15' W; thence to latitude 61°44' N, longitude 149°48' W; thence to latitude 62°23' N, longitude 149°54' W; thence to latitude 62°23' N, longitude 150°14' W; thence to latitude 61°50' N, longitude 151°12' W, point of beginning.

(3) King Salmon—Port Heiden Area.

Beginning at latitude 58°49' N, longitude 159°30' W; thence to latitude 59°40' N, longitude 157°00' W; thence to latitude 59°40' N, longitude 155°30' W;

thence to latitude 59°50' N, longitude 154°50' W; thence to latitude 59°35' N, longitude 154°40' W; thence to latitude 58°57' N, longitude 156°05' W; thence to latitude 58°00' N, longitude 156°20' W; thence to latitude 57°00' N, longitude 158°20' W; thence to latitude 56°43' N, longitude 158°39' W; thence to latitude 56°27' N, longitude 160°00' W; thence along the shoreline to latitude 58°49' N, longitude 159°30' W, point of beginning.

(4) Bethel—Aniak Area. Beginning at latitude 63°28' N, longitude 161°30' W; thence to latitude 62°40' N, longitude 163°03' W; thence to latitude 62°05' N, longitude 162°38' W; thence to latitude 61°51' N, longitude 160°43' W; thence to latitude 62°55' N, longitude 160°30' W; thence to latitude 63°00' N, longitude 158°00' W; thence to latitude 61°45' N, longitude 159°30' W; thence to latitude 61°34' N, longitude 159°15' W; thence to latitude 61°07' N, longitude 160°20' W;

thence to latitude 60°25' N, longitude 160°40' W; thence to latitude 59°36' N, longitude 161°49' W; thence along the shoreline to latitude 63°28' N, longitude 161°30' W; point of beginning; and Nunivak Island.

(5) North Slope Area. Beginning at a point where latitude 69°30' N intersects the northwest coast of Alaska and eastward along the 69°30' parallel to latitude 69°30' N, longitude 156°00' W; thence to latitude 69°10' N, longitude 153°00' W; thence eastward along the 69°10' N parallel to latitude 69°10' N, longitude 149°00' W; thence to latitude 69°50' N, longitude 146°00' W; thence eastward along the 69°50' N parallel to latitude 69°50' N, longitude 145°00' W; thence to latitude 69°35' N, longitude 141°00' W; thence northward along the 141°00' W Meridian to a point where the 141°00' W Meridian intersects the northeast coastline of Alaska; thence

westward along the northern coastline of Alaska to the intersection of latitude 69°30' N; point of beginning.

(6) Fort Yukon Area. Beginning at latitude 67°20' N, longitude 144°00' W; thence to latitude 66°00' N, longitude 143°00' W; thence to latitude 66°05' N, longitude 149°00' W; thence to latitude 66°45' N, longitude 148°00' W; thence to latitude 67°00' N, longitude 147°00' W; thence to latitude 67°20' N, longitude 144°00' W; point of beginning.

(7) The islands of Saint Paul and Saint George, together known as the Pribilof Islands, in the Bering Sea.

Issued in Washington, DC, on October 8, 2004.

**James J. Ballough,**

*Director, Flight Standards Service.*

[FR Doc. 04-23067 Filed 10-13-04; 8:45 am]

**BILLING CODE 4910-13-P**



# Federal Register

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**Thursday,  
October 14, 2004**

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## **Part IV**

## **The President**

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**Proclamation 7829—Columbus Day, 2004**

**Proclamation 7830—General Pulaski**

**Memorial Day, 2004**



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# Presidential Documents

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Title 3—

Proclamation 7829 of October 11, 2004

The President

Columbus Day, 2004

By the President of the United States of America

## A Proclamation

The journeys of Christopher Columbus are among the world's greatest stories of daring and discovery. His courage, optimism, and adventurous spirit altered the course of history. On Columbus Day, we celebrate this remarkable explorer and his contributions to the "New World."

In August 1492, Columbus left Spain and sailed into the unknown with the simplest of navigational equipment. The risks were great and the outcome uncertain. Yet, Columbus was committed to the cause of discovery, finding a more efficient trade route to the East and advancing European civilization.

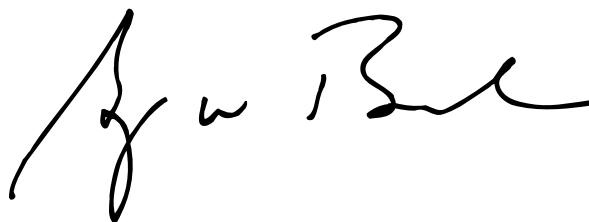
Today, Columbus' voyages continue to stir our imagination and encourage us to explore new frontiers. His spirit of determination and discovery is a characteristic shared by the American people and is reflected throughout our history, from the Lewis and Clark Expedition to the Moon landing and our many scientific and technological advances.

Columbus Day is also a celebration of the many contributions that Italian Americans have made to our Nation. Every aspect of our culture, whether it be art or music, law or politics, reflects the influence of Italian Americans. On this day we also remain thankful for the strong ties between the United States and Italy and pay tribute to the courageous and selfless Italian forces who are helping to advance freedom alongside American and coalition troops in Iraq and Afghanistan.

In commemoration of Columbus' journey, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested that the President proclaim the second Monday of October of each year as "Columbus Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 11, 2004, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first name "G" being particularly large and stylized.

[FR Doc. 04-23206

Filed 10-13-04; 8:54 am]

Billing code 3195-01-P

## Presidential Documents

**Proclamation 7830 of October 11, 2004**

### **General Pulaski Memorial Day, 2004**

**By the President of the United States of America**

#### **A Proclamation**

The story of Revolutionary War hero Brigadier General Casimir Pulaski is one of bravery and sacrifice that helped to secure America's blessings of liberty. We remember General Pulaski for his skill in battle, his commitment to freedom, and his willingness to give his life for America's independence.

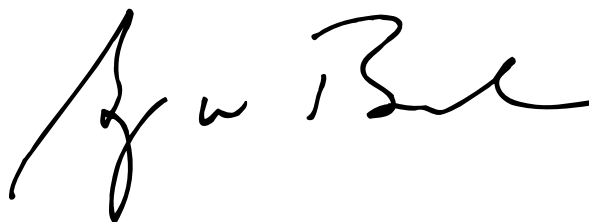
Born in Poland in 1745, Casimir Pulaski first gained distinction as a military hero while fighting to defend his native Poland. His reputation as a bold warrior and his dedication to the cause of liberty became known throughout Europe.

Pulaski met with Benjamin Franklin in Paris in 1777 and agreed to join the Americans in their fight for freedom. He quickly proved to be a gifted military leader and was commissioned as a Brigadier General. He became known as "the Father of the American Cavalry," recruiting and training a special corps of American, Polish, Irish, French, and German troops who fought with great skill and success. During the siege of Savannah in 1779, General Pulaski was mortally wounded, leaving a legacy of heroism that continues to inspire people around the world.

On General Pulaski Memorial Day, we honor a noble patriot committed to the cause of freedom, and we recognize the countless contributions Polish Americans have made to our Nation and our culture. We also celebrate the strong friendship between the United States and Poland, remembering our shared history and common values and honoring the sacrifices of Polish troops who have served bravely alongside American and coalition forces in Iraq and Afghanistan.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 2004, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and honoring all those who defend freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first name "George" and last name "Bush" clearly distinguishable.

[FR Doc. 04-23207

Filed 10-13-04; 8:54 am]

Billing code 3195-01-P



# Federal Register

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**Thursday,  
October 14, 2004**

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**Part V**

## **The President**

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**Proclamation 7831—National School  
Lunch Week, 2004**



# Presidential Documents

**Title 3—****Proclamation 7831 of October 12, 2004****The President****National School Lunch Week, 2004****By the President of the United States of America****A Proclamation**

The National School Lunch Program has provided healthy, affordable lunches to our Nation's children for almost 60 years. The program now serves more than 28 million children each day, many of whom might not otherwise eat nutritious lunches. During National School Lunch Week, we recognize the program's contributions to the health, well-being, and education of our Nation's youth.

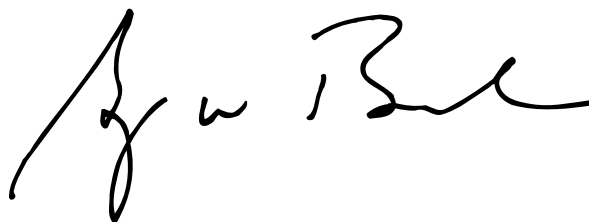
In addition to providing the good nutrition that helps young people succeed in school, healthy school lunches and after-school snacks can help alleviate childhood obesity and lower children's risk of developing health problems. The National School Lunch Program also shares information about healthy eating habits with children, families, and communities; works to provide our children with the best possible school meals; and offers technical training and assistance to school food-service staff. To support this program and other important child nutrition programs, earlier this year I signed into law the Child Nutrition and WIC Reauthorization Act of 2004. This bill expands access to programs for children of Armed Services personnel, promotes healthy food choices, and makes it easier for parents to enroll their eligible children.

The National School Lunch Program has accomplished a great deal in providing children with nutritious meals, and we must continue working to ensure that every child is well-nourished, healthy, and active. While children who participate in the school lunch program consume more fruits, vegetables, milk, and protein than students who obtain lunch elsewhere, over 60 percent of our Nation's young people still eat more than the daily recommended serving of fat, and less than 20 percent eat the recommended daily servings of fruits and vegetables. To promote the right choices, the Department of Agriculture's HealthierUS School Challenge is encouraging schools and local communities to create an environment that supports healthy lifestyles for our Nation's children.

The success of the National School Lunch Program stems from the hard-working Americans who plan, prepare, and serve meals to millions of children every day. In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of America's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87-780), as amended, has designated the week beginning on the second Sunday of October of each year as "National School Lunch Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 10 through October 16, 2004, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program in appropriate activities that support the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first name "G" being particularly large and stylized.

[FR Doc. 04-23209

Filed 10-13-04; 10:22 am]

Billing code 3195-01-P

# Reader Aids

## Federal Register

Vol. 69, No. 198

Thursday, October 14, 2004

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### FEDERAL REGISTER PAGES AND DATE, OCTOBER

58799-59118.....	1
59119-59540.....	4
59541-59758.....	5
59759-60076.....	6
60077-60282.....	7
60283-60536.....	8
60537-60794.....	12
60795-60942.....	13
60943-61142.....	14

### CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

#### 3 CFR

##### Proclamations:

7822.....	59539
7823.....	59759
7824.....	60275
7825.....	60277
7826.....	60279
7827.....	60789
7828.....	60793
7829.....	61135
7830.....	61137
7831.....	61141

##### Administrative Orders:

Presidential	
Determinations:	
No. 2004-53 of	
September 30,	
2004.....	60943
No. 2004-54 of	
September 30,	
2004.....	60945

#### 5 CFR

591.....59761

##### Proposed Rules:

550.....60097

#### 7 CFR

6.....	59763
60.....	59708
301.....	59119, 60537
611.....	60283
987.....	60947
1206.....	59120
1730.....	60537
1776.....	59764
1783.....	59770

##### Proposed Rules:

304.....	60567
457.....	60320
923.....	59551
1776.....	59836
1783.....	59836
4280.....	59650

#### 8 CFR

214.....60939

#### 9 CFR

52.....	60542
317.....	58799
381.....	58799

#### 10 CFR

50.....	58804
73.....	58820

##### Proposed Rules:

110.....60567

#### 11 CFR

104.....59775

110.....59775

#### 12 CFR

204.....	60543
335.....	59780
747.....	60077

#### 14 CFR

13.....	59490
23.....	58822
25.....	60795, 60797
39.....	58824, 58826, 58828,
	59541, 59788, 59790, 60081,
	60799, 60801, 60802, 60804,
	60807, 60809, 60949, 60952,
	60954
71.....	59129, 59303, 60284,
	60285, 60286, 60956
91.....	59752, 60534

##### Proposed Rules:

39.....	59147, 59148, 59151,
	59153, 59557, 59559, 59837,
	60098, 60100, 60104, 60106,
	60568, 60971
71.....	58859, 59756
73.....	58860
95.....	61128
97.....	59756

#### 15 CFR

730.....	60545
734.....	60545
744.....	59303
746.....	60545
770.....	60545
772.....	60545
774.....	60545

##### Proposed Rules:

732.....	60829
736.....	60829
740.....	60829
744.....	60829
752.....	60829
764.....	60829
772.....	60829
904.....	60569

#### 16 CFR

##### Proposed Rules:

642.....	58861
698.....	58861

#### 17 CFR

1.....	59544
211.....	59130
232.....	60287
240.....	60287
249.....	60287

##### Proposed Rules:

228.....	59094
229.....	59094
232.....	59094

240.....59094	<b>33 CFR</b>	271 .....59165, 60110, 60975	19.....59699, 59700
249.....59094	100 .....59793, 59795, 59797	<b>42 CFR</b>	22.....59700
270.....59094	117 .....59135, 59136, 60555	71.....59144	25.....59700
<b>19 CFR</b>	151 .....60309	403.....60242	33.....59700
191.....60082	165 .....58833, 58834, 59136,	412.....60242	36.....59699
<b>Proposed Rules:</b>	59799, 59801, 59803, 59806,	413.....60242	39.....59702
133.....59562, 60936	59808	418.....60242	52 .....59700, 59703, 60967
<b>20 CFR</b>	<b>Proposed Rules:</b>	460.....60242	53.....59699
404.....60224	110.....60592	480.....60242	1852.....60967
408.....60224	117.....60595, 60597	482.....60242	1853.....60967
416.....60224	165.....60600	483.....60242	1872.....60967
<b>21 CFR</b>	<b>36 CFR</b>	485.....60242	<b>Proposed Rules:</b>
74.....60307	242.....60957	489.....60242	1511.....59843
510.....60811	<b>Proposed Rules:</b>	<b>44 CFR</b>	1552.....59843
520.....59131, 60547	1270.....58875	64.....60309	2101.....59166
522.....60308	<b>37 CFR</b>	<b>45 CFR</b>	2102.....59166
556.....60308	2.....59809	2251.....60094	2103.....59166
558.....60547	270.....59648	2252.....60094	2104.....59166
888.....59132	<b>38 CFR</b>	2253.....60094	2105.....59166
<b>Proposed Rules:</b>	1.....60083	<b>Proposed Rules:</b>	2109.....59166
16.....60108	3.....60083	Ch. XXV.....60603	2110.....59166
118.....60108	<b>Proposed Rules:</b>	<b>47 CFR</b>	2115.....59166
361.....59569	5.....59072	0.....59145	2116.....59166
<b>22 CFR</b>	<b>39 CFR</b>	1.....58840, 59145	2131.....59166
51.....60811	20.....59545	15.....59500	2132.....59166
<b>25 CFR</b>	111.....59139, 59545	27.....59500	2137.....59166
170.....60957	501.....60090, 61085	54.....59145	2144.....59166
<b>26 CFR</b>	<b>40 CFR</b>	64.....60311	2146.....59166
1.....60222	35.....59810	73 .....58840, 59500, 60316,	2149.....59166
<b>Proposed Rules:</b>	52 .....59546, 59812, 60962	60560, 60561	2152.....59166
1.....58873	63.....58837, 60813	90.....59500, 60561	<b>49 CFR</b>
48.....59572	180.....60820	101.....59145	1.....60562
<b>29 CFR</b>	261.....60557	<b>Proposed Rules:</b>	171.....58841
<b>Proposed Rules:</b>	271 .....59139, 60091, 60964	0.....59166	173.....58841
1910.....59306	300.....58839	2.....59166	571 .....58843, 59146, 60316,
1915.....59306	<b>Proposed Rules:</b>	73 .....60344, 60346, 60604,	60563, 60968
1917.....59306	9.....60320	60605	1002.....58855
1918.....59306	23.....60320	101.....59166	<b>50 CFR</b>
1926.....59306	52 .....59572, 59839, 60328,	<b>48 CFR</b>	17.....59996
<b>30 CFR</b>	60974	Ch. 1.....59698, 59699, 60967	100.....60957
914.....58830	63.....60837	1.....59699	300.....59303
<b>Proposed Rules:</b>	271 .....60975	5.....59700	648 .....59550, 59815, 60565
906.....58873	81.....60328	7.....59701	660.....59816
<b>32 CFR</b>	163.....60320	11.....59701	679 .....59834, 59835, 60566,
199.....60547	177.....60320	12.....59700	60828, 60970
	178.....60320	13.....59699, 59700, 59701	<b>Proposed Rules:</b>
	179.....60320	14.....59700, 59703	17 .....58876, 59844, 59859,
	180.....59843, 60320	15.....59701	60110, 60134, 60138, 60605,
	261.....59156	17.....59700	60706

**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT OCTOBER 14, 2004****DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Introduction; technical amendments

Correction; published 10-14-04

**ENVIRONMENTAL PROTECTION AGENCY**

Radiation protection programs:

Disposal regulations; Waste Isolation Pilot Plant compliance; certification and recertification criteria—

Alternative provisions; published 7-16-04

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Introduction; technical amendments

Correction; published 10-14-04

**JUSTICE DEPARTMENT****Drug Enforcement Administration**

Controlled substances; manufacturers, distributors, and dispensers; registration: Personal medical use; exemption from import or export requirements; published 9-14-04

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Acquisition regulations:

Administrative procedures and guidance; published 10-14-04

Federal Acquisition Regulation (FAR):

Introduction; technical amendments

Correction; published 10-14-04

**SECURITIES AND EXCHANGE COMMISSION**

Investment companies:

Brokerage commission use to finance distribution; prohibition; published 9-9-04

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:

CFM International; published 9-9-04

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

**AGRICULTURE DEPARTMENT****Forest Service**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Wildlife; 2005-2006 subsistence taking; comments due by 10-22-04; published 8-31-04 [FR 04-19839]

**AGRICULTURE DEPARTMENT****Food Safety and Inspection Service**

Meat and poultry inspection:

Foreign inspection system supervisory visits to certified foreign establishments; frequency; comments due by 10-18-04; published 8-18-04 [FR 04-18889]

**COMMERCE DEPARTMENT**

**Economic Analysis Bureau**  
Direct investment surveys:  
BE-10; benchmark survey of U.S. direct investment abroad (2004); comments due by 10-18-04; published 8-17-04 [FR 04-18640]

**COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Endangered and threatened species:

Salmonids in California; listing determinations; hearings; comments due by 10-20-04; published 9-9-04 [FR 04-20425]

West Coast Salmonids; extension of comment period and public hearing; comments due by 10-20-04; published 8-31-04 [FR 04-19867]

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Gulf of Alaska pollock and Pacific cod; comments due by 10-21-04; published 9-21-04 [FR 04-21217]

Atlantic highly migratory species—

Atlantic shark; comments due by 10-18-04; published 9-22-04 [FR 04-21289]

Large and small coastal sharks; comments due by 10-18-04; published 9-17-04 [FR 04-21002]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 10-21-04; published 9-21-04 [FR 04-20888]

**COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA**

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Bid bonds; powers of attorney; comments due by 10-22-04; published 8-23-04 [FR 04-19234]

**ENERGY DEPARTMENT****Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:

Energy conservation standards—  
Commercial packaged boilers; test procedures and efficiency standards; Open for comments until further notice; published 12-30-99 [FR 04-17730]

**ENERGY DEPARTMENT****Federal Energy Regulatory Commission**

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

Stratospheric ozone protection—

Methyl bromide phaseout; critical use exemption process; comments due by 10-21-04; published 9-20-04 [FR 04-21053]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 10-21-04; published 9-21-04 [FR 04-21179]

Colorado; comments due by 10-18-04; published 9-16-04 [FR 04-20793]

North Carolina; comments due by 10-20-04; published 9-20-04 [FR 04-21060]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas;

Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bromoxynil, diclofop-methyl, dicofol, diquat, etridiazole, et al.; comments due by 10-18-04; published 10-6-04 [FR 04-22474]

DCPA; comments due by 10-19-04; published 8-20-04 [FR 04-19035]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:

Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services; comments due by 10-18-04; published 9-1-04 [FR 04-18551]

Radio stations; table of assignments:

California; comments due by 10-18-04; published 9-9-04 [FR 04-20360]

Minnesota; comments due by 10-18-04; published 9-10-04 [FR 04-20531]

Ohio; comments due by 10-18-04; published 9-9-04 [FR 04-20358]

Texas; comments due by 10-18-04; published 9-9-04 [FR 04-20359]

Various States; comments due by 10-18-04; published 9-9-04 [FR 04-20357]

Washington; comments due by 10-18-04; published 9-10-04 [FR 04-20532]

# **FEDERAL DEPOSIT INSURANCE CORPORATION**

Community Reinvestment Act; implementation:

Community development criterion for small banks; small banks and community development definitions; comments due by 10-20-04; published 9-20-04 [FR 04-21162]

Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:

Burden reduction recommendations; comments due by 10-18-04; published 7-20-04 [FR 04-16401]

# **FEDERAL RESERVE SYSTEM**

Economic Growth Regulatory Paperwork Reduction of 1996; implementation:

Burden reduction recommendations; comments due by 10-18-04; published 7-20-04 [FR 04-16401]

# **GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Bid bonds; powers of attorney; comments due by 10-22-04; published 8-23-04 [FR 04-19234]

# **HEALTH AND HUMAN SERVICES DEPARTMENT**

## **Food and Drug Administration**

Administrative practice and procedure:

New drug applications; complete response letter and amendments to unapproved applications; comments due by 10-18-04; published 7-20-04 [FR 04-16476]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

# **HOMELAND SECURITY DEPARTMENT**

## **Coast Guard**

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:

Wisconsin; comments due by 10-21-04; published 9-21-04 [FR 04-21136]

# **HOMELAND SECURITY DEPARTMENT**

## **Transportation Security Administration**

Civil aviation security:

Security awareness training for flight school employees; aliens and other designated individuals; notification; comments due by 10-20-04; published 9-20-04 [FR 04-21220]

# **INTERIOR DEPARTMENT**

## **Indian Affairs Bureau**

Law and order on Indian reservations:

Albuquerque Indian School property, NM; Courts of Indian Offenses; addition to Santa Fe Indian School property listing; comments due by 10-19-04; published 8-20-04 [FR 04-19113]

# **INTERIOR DEPARTMENT Fish and Wildlife Service**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Wildlife; 2005-2006 subsistence taking; comments due by 10-22-04; published 8-31-04 [FR 04-19839]

Endangered and threatened species permit applications Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Critical habitat designations— Buena Vista Lake shrew; comments due by 10-18-04; published 8-19-04 [FR 04-18988]

# **INTERIOR DEPARTMENT**

## **National Park Service**

Special regulations:

Fire Island National Seashore, NY; personal watercraft use; comments due by 10-22-04; published 8-23-04 [FR 04-19189]

# **INTERIOR DEPARTMENT**

## **Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land

reclamation plan submissions:

Colorado; comments due by 10-18-04; published 10-1-04 [FR 04-22017]

# **JUSTICE DEPARTMENT**

## **Prisons Bureau**

Community programs and release:

Community confinement; comments due by 10-18-04; published 8-18-04 [FR 04-18747]

# **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Bid bonds; powers of attorney; comments due by 10-22-04; published 8-23-04 [FR 04-19234]

# **NUCLEAR REGULATORY COMMISSION**

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

Production and utilization

facilities; domestic licensing: Pressure vessel code cases; American Society of Mechanical Engineers; incorporation by reference; comments due by 10-18-04; published 8-3-04 [FR 04-17609]

# **POSTAL SERVICE**

Domestic Mail Manual:

Bundles of flat-size and irregular parcel mail; address visibility; comments due by 10-18-04; published 9-2-04 [FR 04-19992]

# **SECURITIES AND EXCHANGE COMMISSION**

Fair and Accurate Credit

Transactions Act; implementation:

Consumer report information disposal; comments due by 10-20-04; published 9-20-04 [FR 04-21031]

# **SMALL BUSINESS ADMINISTRATION**

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

# **SOCIAL SECURITY ADMINISTRATION**

Social security benefits:

Federal old-age, survivors, and disability insurance— Genitourinary impairments evaluation; revised

medical criteria; comments due by 10-22-04; published 8-23-04 [FR 04-19188]

# **OFFICE OF UNITED STATES TRADE REPRESENTATIVE Trade Representative, Office of United States**

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

# **TRANSPORTATION DEPARTMENT**

## **Federal Aviation Administration**

Airworthiness directives:

Boeing; comments due by 10-18-04; published 9-3-04 [FR 04-20124]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 10-18-04; published 9-22-04 [FR 04-21273]

Eurocopter France; comments due by 10-18-04; published 8-19-04 [FR 04-18438]

McDonnell Douglas; comments due by 10-18-04; published 9-3-04 [FR 04-20123]

Pratt & Whitney; comments due by 10-18-04; published 8-18-04 [FR 04-18919]

Airworthiness standards:

Special conditions— Cessna 206H and T206H airplanes; comments due by 10-21-04; published 9-21-04 [FR 04-21138]

Dassault Model Mystere-Falcon and Model Fan Jet Falcon airplanes; various series; comments due by 10-22-04; published 9-22-04 [FR 04-21224]

Lockheed Martin Corp. Model 1329-23A, -23-D, -23E, and 1329-25 airplanes; comments due by 10-22-04; published 9-22-04 [FR 04-21225]

Colored Federal airways; comments due by 10-18-04; published 9-3-04 [FR 04-20175]

# **TRANSPORTATION DEPARTMENT**

## **Federal Highway Administration**

Right-of-way and environment:

Highway traffic and construction noise; abatement procedures; comments due by 10-19-04; published 8-20-04 [FR 04-18850]

#### **TREASURY DEPARTMENT Comptroller of the Currency**

Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:  
Burden reduction recommendations; comments due by 10-18-04; published 7-20-04 [FR 04-16401]

#### **TREASURY DEPARTMENT Internal Revenue Service**

Estate and gift taxes:

Qualified interests; comments due by 10-21-04; published 7-26-04 [FR 04-16593]

Income taxes:

Governmental units serving as nonbank trustee of individual retirement accounts; cross-reference; comments due by 10-20-04; published 7-22-04 [FR 04-16595]

Optional 10-year writeoff of certain tax preferences; comments due by 10-18-04; published 7-20-04 [FR 04-16474]

Partnerships and their partners; qualified small business stock sale; grain deferral; hearing date correction; comments due by 10-19-04; published 9-2-04 [FR 04-20056]

Procedure and administration:

Entity classification changes; eligible associations taxable as a corporation for qualified electing S

corporation; comments due by 10-18-04; published 7-20-04 [FR 04-16233]

#### **TREASURY DEPARTMENT Thrift Supervision Office**

Economic Growth and Regulatory Paperwork Reduction Act of 1996; implementation:  
Burden reduction recommendations; comments due by 10-18-04; published 7-20-04 [FR 04-16401]

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#### **LIST OF PUBLIC LAWS**

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**H.R. 1308/P.L. 108-311**  
Working Families Tax Relief Act of 2004 (Oct. 4, 2004; 118 Stat. 1166)

#### **H.R. 265/P.L. 108-312**

Mount Rainier National Park Boundary Adjustment Act of 2004 (Oct. 5, 2004; 118 Stat. 1194)

#### **H.R. 1521/P.L. 108-313**

Johnstown Flood National Memorial Boundary Adjustment Act of 2004 (Oct. 5, 2004; 118 Stat. 1196)

#### **H.R. 1616/P.L. 108-314**

Martin Luther King, Junior, National Historic Site Land Exchange Act (Oct. 5, 2004; 118 Stat. 1198)

#### **H.R. 1648/P.L. 108-315**

Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2004 (Oct. 5, 2004; 118 Stat. 1200)

#### **H.R. 1732/P.L. 108-316**

To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes. (Oct. 5, 2004; 118 Stat. 1202)

#### **H.R. 2696/P.L. 108-317**

Southwest Forest Health and Wildfire Prevention Act of 2004 (Oct. 5, 2004; 118 Stat. 1204)

#### **H.R. 3209/P.L. 108-318**

To amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project. (Oct. 5, 2004; 118 Stat. 1211)

#### **H.R. 3249/P.L. 108-319**

To extend the term of the Forest Counties Payments

Committee. (Oct. 5, 2004; 118 Stat. 1212)

#### **H.R. 3389/P.L. 108-320**

To amend the Stevenson-Wydler Technology Innovation Act of 1980 to permit Malcolm Baldrige National Quality Awards to be made to nonprofit organizations. (Oct. 5, 2004; 118 Stat. 1213)

#### **H.R. 3768/P.L. 108-321**

Timucuan Ecological and Historic Preserve Boundary Revision Act of 2004 (Oct. 5, 2004; 118 Stat. 1214)

#### **S.J. Res. 41/P.L. 108-322**

Commemorating the opening of the National Museum of the American Indian. (Oct. 5, 2004; 118 Stat. 1216)

#### **H.R. 4654/P.L. 108-323**

To reauthorize the Tropical Forest Conservation Act of 1998 through fiscal year 2007, and for other purposes. (Oct. 6, 2004; 118 Stat. 1218)

**Last List October 6, 2004**

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